2431.

SUPREME COURT OF THE UNITED STATES.

No. 58.

ISAAC M. FISHER, APPELLANT,

v.

JACOB M. HALDEMAN, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Pleas before the Honorable the Judges of the Circuit Court of the United States, for the Eastern District of Pennsylvania, in the Third Circuit. Of October Session, 1848, No. 2.

It is thus contained:

Bill in Equity.

ISAAC M. FISHER, Esq., a citizen of the State of Delaware,
v.
JACOB M. HALDEMAN, Esq., a citizen of the State of Pennsylvania, and THOMAS CHAMBERS, Esq., a citizen of the State of Pennsylvania, Administrator de bonis non with the Will annexed, of the Honorable THOMAS DUNCAN, dec'd.

1. To the Judges of the Circuit Court of the United States, for the Eastern District of Pennsylvania, sitting in Equity: Humbly complaining, shows to your honors, your orator, Isaac M. Fisher, of the County of Sussex, in the State of Delaware, and a citizen of the same State of Delaware. That, on the fourth day of March, in the year one thousand six hundred and eighty-one, Charles the Second, then King of England, granted, under the Great Seal of that Kingdom, by letters patent, the territory composing the present State of Pennsylvania, to Wm. Penn, Esq., to be held by the said William, his heirs and assigns, in free and common socage, in fee simple.

2. That in or about one thousand six hundred a nd eighty-one, William Penn, Esq., came into the Province, and took actual possession of the same. That, at the time of the grant in 1681, the whole of the territory embraced in it was an uncultivated wilderness, inhabited only by wild beasts and savage men.

3. That for the purpose, and with a view of inducing individual laborers and cultivators of the soil to come and settle in Pennsylvania, to clear the forest, reclaim the country from its barbarous condition, and establish within the borders of the Province a community of Christian people, William Penn and his agents, soon after the year 1681, and long before the year 1749, did establish, as the common law, usage, and custom of his government, in and over the Province, that all the lands in the Province, after the same should be purchased of the Indians by the proprietor, should be liable to be appropriated by, and to the use of, such individuals as would venture into the wilderness, and make actual settlements and improvements

upon the vacant lands of the Province, by building houses on the same and taking up their residence therein, with the manifest intention of making them their places of abode and the means of supporting themselves and their families, by the cultivation of the soil. The proprietor, at the same time, reserving to himself, for his sole and separate use, the one-tenth part of all the land in the Province; to be laid off and designated at his will and pleasure, in such manner, and by such acts, as to give due and public notice to all the inhabitants of the Province of the time when, and of the place where, he so laid off, to his sole, separate, and exclusive use, any portion or particular part of the land of the Province; which portion of land, so appropriated to his own separate and exclusive use, by the proprietor, from the time that due notice of such appropriation, or of the intention of such appropriation, was given to the public by the proprietor, ceased to be open and liable to be appropriated by individuals to their private use.

4. Your orator also states, that in the orginal grant of the Province of Pennsylvania by the British Crown to William Penn, the rivers and islands within the Province were granted in the same manner and were to be held by the same title as the other parts of the provincial territory. And that by the conditions, concessions, and reservations agreed upon by and between William Penn and such persons as were then, or thereafter might be, adventurers and settlers in the Province of Pennsylvania, dated on the eleventh day of July, in the year 1681, it was stipulated and agreed:

5. "That in every hundred thousand acres of land in the Province, the Governor and Proprietor reserveth ten thousand acres to himself, which ten thousand should be laid off, but in one place."

6. And your orator shows, that in this fundamental law of the Province, which was the origin, and forms at this day the basis, of titles to lands in Pennsylvania, by settlement and improvement, there is no reservation of the islands in the River Susquehanna or in any other river of the Province, to the separate and exclusive use of the proprietor, nor are individuals in any way warned not to enter upon and appropriate such islands, by actual settlement and improvement, to their own private use. And your orator states that the proprietors never claimed the exclusive navigation, nor the exclusive fishery in the Susquehanna River, but that both the navigation and the fishery in this river have been open to, and have been used at pleasure by the public, at all times, since the original settlement of the Province.

7. That in this manner, under the sanction and with the consent and approbation of William Penn, his servants and agents, a universal custom and usage became established in Pennsylvania, long before the year 1749, that any person who would and did enter upon the vacant and unappropriated lands of the Province, after the same had been purchased of the Indians by the proprietor, build a house,

fit for the habitation of man, upon such vacant land, and did make it the place of his abode, with the intention of supporting a family by the cultivation of the earth, thereby could and did acquire a good and valid title in fee-simple, to the quantity of three hundred acres of the vacant land of the Province, if there was so much land at that place vacant and unappropriated by any older title, to be laid off in a convenient and suitable manner, adjoining his dwelling.

8. Your orator further states that all written evidence of the words and acts of William Penn and his successors, by which they established and confirmed the right, custom, and usage by and under which individuals could and did acquire equitable rights and titles in fee-simple to the vacant and unappropriated lands of the Penn family, in the Province, now State of Pennsylvania, by settlement and improvement, is lost in the efflux of ages, by time and accident; that the witnesses who were alive at the institution of the usage and custom, of settlement and improvement, are long since dead; and that the only proof of the origin and continuance of the custom of settlement and improvement, as a title to lands, that can now be adduced, is to be found in the universal existence and practice of such usage and custom throughout Pennsylvania, for a century and a half, as acknowledged by the people, by the Legislature, and by the judicial tribunals of the Province, of the State, and of the United States.

9. That the title thus acquired by a settler, by such actual settlement and improvement, was not an absolute, legal, fee-simple right to the land so settled upon, but only an equitable fee-simple, capable of being converted at any time, at the pleasure of the settler, into a legal fee-simple, by the payment to William Penn or his successors, of the price of the land, together with interest from the date of the settlement, which price was established by the proprietor, and was uniform. That upon the payment of the purchase-money and customary fees, the settler was entitled to a warrant, survey, and patent, which vested the legal fee-simple of the land in such settler.

10. Your orator further states, that it was established as the usage, custom, and common law of the Province of Pennsylvania, that the right and title of a settler and improver to his land, was not, and could not, be forfeited to the proprietor by the non-payment of the purchase-money of the land, by the settler and improver, within six months or one year, or any other particular time, after the date of the settlement and improvement. That the proprietor could not enter upon or oust the settler and improver for the non-payment of the purchase-money of the land; but that by the custom, usage, and common law of Pennsylvania, the purchase-money was regarded as a debt secured by mortgage upon the land in favor of the proprietor, constituting a perpetual lien upon the land, until paid with interest into whosoever hands the equitable title and possession of the land might pass. And that the proprietor had no other, higher, better,

or further remedy for the recovery of the purchase-money due for lands held by settlement and improvement, than other mortgagees had for the recovery of debts secured by mortgage, and no better remedy than the proprietary had for the recovery of the purchase-money due for land held by warrant. That in all cases of land held by settlement and improvement, the equitable fee-simple was, by the custom of the Province, vested in the settler and his heirs and assigns, the proprietor holding the legal estate in trust, for the use and benefit of the settler, to be conveyed to the settler by patent whenever the purchase-money should be paid by the settler to the proprietor, or whenever, after the settler had cleared and improved the land, the proprietor, or his assignee, should enter upon it, and remove the settler therefrom, contrary to the law, equity, and custom of Pennsylvania, and receive the amount of the purchase-money, interest, and office fees out of the rents, issues, and clear profits of the land so settled upon and improved by the actual settler.

11. Your orator further shows, that at all times under the proprietary government, before and down to the 13th day of October, in the year 1760, the islands in the River Susquehanna, within the several Indian purchases, were open to occupancy and appropriation, and liable to be taken possession of, and held in equitable fee-simple by actual settlement and improvement by such persons as might, from time to time, think proper to enter upon, settle, and improve such islands, in the same manner and upon the same conditions and reservations as were established by the law and custom of the Province for the appropriation by individuals, to their own use, of the other vacant and unappropriated lands of the Province, for the survey and appropriation of which, either for the use of the proprietors or of some individual or individuals, no order or warrant had been issued from the proprietary land office, either in the name of the proprietors or of their agents, and upon which no prior settlement had been made. And your orator further shows, that no evidence exists that before the 13th day of October, 1760, there was any law, custom, or usage which prevented individuals from settling on the islands in the Susquehanna River, when purchased from the Indians by the proprietors, and acquiring a title to such islands by actual settlement and improvement, in the same manner as on other vacant lands. And your orator expressly states that there is no evidence amongst the records of the Land Office of Pennsylvania of any order or warrant, direction, authority or instruction, for the survey of the islands in the Susquehanna River generally, nor of Island No. 3 in particular, for the use of the proprietor, before the 13th day of October, 1760.

12. Your orator further shows, that on or about the 22d day of August, in the year 1749, the then Proprietary Government of Pennsylvania purchased of the Indians who claimed to be the owners, all the land on the eastern side of the Susquehanna River, from near

the present Town of Harrisburg, in Pennsylvania, beginning at the Kittatinny Mountain, in the County of Dauphin, to the Mahonoy Creek, in the County of Northumberland, and including all the waters of the Susquehanna River from shore to shore, and all the islands in the River Susquehanna, from the Kittatinny Mountain to the Mahonoy Creek.

13. That within the said Indian purchase of the 22d day of August, 1749, was and is the island called in this bill the Big Island, M'Elcar's Island, Baskin's Island, or Island No. 3, in the River Susquehanna, near the mouth of the River Juniata, in the County of Dauphin, in the State of Pennsylvania, containing about 800 acres, more or less.

14. Your orator further shows, that in the year 1749 and 1750, the price at which the proprietors of the Province of Pennsylvania sold their vacant and unappropriated lands in and near the Susquehanna River, and lying within or without the Indian purchase of August 22, 1749, was £15 10*s*., Pennsylvania currency, amounting to $41, 33⅓ cents for each and every hundred acres of land, whether islands in the river or lands on the shore of the river.

15. Your orator states, that on or about the first day of September, in the year 1749, the Proprietors of Pennsylvania granted the Big Island, No. 3, lying in the Susquehanna River, at the mouth of the River Juniata, containing about 800 acres, more or less, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins; to hold to them and their heirs and assigns forever, in equitable fee-simple, as actual settlers, according to the law and custom of the Province governing the rights and titles of actual settlers upon the vacant and unappropriated lands of the Province, in other cases in which the lands settled upon were not islands; with permission and authority to the grantees to enter upon and take possession of the same Big Island and of every part of it; and to divide it amongst themselves by lines and boundaries, in such manner that no one of the grantees, Thornton, Paxton, Clark, or Baskins, should have or hold to himself more than 300 acres of the said island, each one of the grantees of the island to hold his part or portion of the same as an actual settler, according to the law and custom of the Province governing the rights and titles of actual settlers to their lands in other cases; the grantors and proprietors, on their part, engaging and undertaking to hold the legal title to the said Big Island as trustees, in trust for the aforesaid grantees, their heirs and assigns, in the same manner and upon the same terms and conditions on which the proprietors held the legal estate in the lands of other actual settlers and improvers on the vacant lands of the Province, according to the law and custom of the Province. And that it was part of the terms of the grant of the Big Island by the proprietors to the grantees of and settlers upon the same, their heirs and assigns, that whenever, or at such times as the proprietors or those authorized by

them, should receive the purchase-money of the island with its interest, from the grantees and settlers, their heirs and assigns, or whenever the proprietors, or their heirs and assigns, should receive the purchase-money and interest by entering upon the island and taking possession of the same, and taking and receiving the rents, issues, and profits of the same, to the value of the purchase-money of the island, together with its interest, and the price of the patents, and the other customary fees of the land office, the proprietors, the grantors, or their heirs or successors, should and would issue and make to the several settlers upon the Big Island patents for their respective portions of the island, conveying the legal fee-simple thereof to the settlers, their heirs or legal representatives.

16. And your orator states, that the aforesaid grant of the Big Island, No. 3, was made by the proprietors, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, in consideration that they would enter upon, take possession of, and settle and improve the island, which lay at a very dangerous and exposed point of the Indian frontier; and formed an advantageous post for watching the movements and threatened invasions of the savages who dwelt upon the Upper Susquehanna and Juniata Rivers.

17. That at the time of the grant of the Big Island, as aforesaid, on or about the first day of September, 1749, by the proprietors of Pennsylvania, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, it was stipulated and agreed, by and between the proprietors of the one part, and Clark, Paxton, Thornton, and Baskins, the grantees as aforesaid of the Big Island, of the other part, that the grantees should and would, in consideration of the grant, pay to the proprietors the highest price for each and every hundred acres of the island, that the proprietors, by the practice, usage, and custom of their Land Office, in the year 1749, charged to warrantees or actual settlers, for any part or portion of their unimproved and unappropriated lands, whether islands in the Susquehanna or other lands, lying in or bounded by the Susquehanna River, and lying within the Indian purchase of August 22d, 1749. And your orator states, that the highest price at which the proprietors of Pennsylvania, in the year 1749, 1750, and 1755, sold any part or portion of their vacant and unappropriated lands within the Indian purchase of August 22, 1749, whether islands in the River Susquehanna, or lands on the main shore of the river, was fifteen pounds ten shillings, Pennsylvania currency, or forty-one dollars and thirty-three and one-third cents, for each and every acre of such lands. And that $41 33⅓ for every hundred acres of the Island No. 3, was the price at and subject to which the proprietors of Pennsylvania granted the Big Island, No. 3, to the aforesaid grantees, Thornton, Paxton, Clark, and Baskins, in the year 1749; and that $41 33⅓, for each and every hundred acres of the Big Island, No. 3, was the price which Joseph Thornton, Michael Paxton, George Clark, and

Francis Baskins, in the year 1749, agreed to pay to the proprietor of Pennsylvania for the Big Island, No. 3, at the date of the grant aforesaid. And your orator states, that the aforesaid grant so made on or about the first day of September, in the year 1749, by the proprietors of Pennsylvania, of the Big Island, No. 3, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, and to their heirs and assigns, has been lost by time and accident, and therefore cannot be produced to be given in evidence before this Court; and that all the witnesses who were present when the said grant was made, or who saw or heard it made, are long since dead, and cannot be produced to give evidence in this cause; and your orator states, that he relies with confidence on the ancient, uninterrupted, and undisturbed, and unchallenged possession and occupation, as their own property and estate in equitable fee simple, for the period of fifty-two years, of the Big Island, No. 3, by Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, and Alexander Steen, and their heirs, devisees, and assigns, as charged and set forth in this bill of complaint, as evidence presumptive and conclusive, that the Big Island, No. 3, was granted by the proprietors of Pennsylvania, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, and their heirs and assigns, in equitable fee simple, on or about the first day of September, in the year 1749, as charged and stated in this Bill of Complaint by your orator.

18. Your orator further shows, that on or about the first day of September, in the year 1749, and after the grant of the Big Island, No. 3, in the Susquehanna River, as aforesaid, by the proprietors, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, they, confiding, believing, and confidently trusting in the promises, assertions, permissions, and grant of the then proprietors of Pennsylvania, as well as in the custom and usage of the Land Office, and of the Province, entered, by virtue of the aforesaid permission, grant, and custom, into and took possession of the whole island called the Big Island, Baskin's Island, M'Elcar's Island, or Island No. 3, in the Susquehanna River, at the mouth of the Juniata River, and within the purchase made by the proprietors of the Indians on the 22d day of August, 1749.

19. And your orator expressly states, that on the first day of September, in the year 1749, the island in controversy in this bill, and which is called the Big Island, Baskins' Island, M'Elcar's Island, or Island No. 3, in this bill, and lying in the River Susquehanna, and within the Indian purchase of August 22d, 1749, was vacant and unappropriated, and liable to be taken up and appropriated to the use of individuals by actual settlement and improvement, on the same common terms with other vacant lands in the province, and that on the first day of September, 1749, Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins,

entered upon and took possession of the said island, as set forth in this bill.

20. That in the month of September, in the year 1749, Joseph Thornton and Michael Paxton settled at and upon the Big Island, near the head or upper part of the same, and built a house fit for the habitation of man, at their place of settlement, and went to live together in their house, near the head of the island, and made it the place of their abode and residence from that time forward, with the approbation, knowledge, and consent of the proprietors.

21. That in the month of September, in the year 1749, George Clark made a settlement on the Big Island, near the river shore, about midway of the island, between the upper and lower ends of the same, built a house at his place of settlement on the island, fit for the habitation of man, and went to live and reside in that house, and continued to reside in the same as his home, from that time forward, with the knowledge, consent, and approbation of the proprietors.

22. That in the month of September, in the year 1749, Francis Baskins settled on the Big Island, near the lower end of the same; built a house there fit for the habitation of man, and took up his residence and abode in his house there built, and made it the place of his residence and home from that time forward, with the knowledge, consent, and approbation of the proprietors.

23. Your orator further shows, that the several settlers and improvers on the Big Island as aforesaid, held, claimed, and occupied the whole of the island, and divided into three parts or divisions, by known lines and boundaries, amongst themselves; of which three divisions, the upper part of the island, containing about three hundred acres, more or less, was owned and possessed by Joseph Thornton and Michael Paxton jointly, by virtue of their settlement, improvement, right, and residence near the head of the island, with the knowledge, consent, and approbation of the proprietors.

24. That the middle or central division of the island, on the east side, containing about 200 acres, more or less, was held and possessed by George Clark, in virtue and right of his settlement near the river shore or eastern side of the island, with the knowledge, consent, and approbation of the proprietors.

25. And that the lower part of the island, containing about 300 acres, more or less, was held, possessed, and occupied by Francis Baskins, in virtue of his settlement and improvement near the lower or south end of the Big Island, with the knowledge, consent, and approbation of the proprietors.

26. That the aforesaid settlers on the island held each and respectively their several parts of the island, by lines and boundaries fixed, established, and known to themselves and the proprietors, their servants, and agents; and that the island was so divided amongst the

settlers, by lines, corners, and boundaries, in the year 1750, with the knowledge, consent, and approbation of the proprietors.

27. Your orator further shows, that after the year 1749, and before the year 1755, to wit, in or about the year 1750, one Alexander Steen or Stevens, who was a son-in-law of Francis Baskins, by some contract or agreement with Francis Baskins, George Clark, Joseph Thornton, and Michael Paxton (all evidence of which contract or agreement, except the possession of Alexander Steen, and those claiming under him, is lost), or with some of them, obtained a right from the aforesaid settlers upon and possessors of the Big Island, to enter upon it, to build a house there, near the branch or western shore of the island, nearly over against the house of George Clark, to move into the house so built by him, to live and reside there, and to become entitled to and to hold, as a settler and improver upon the island, the quantity of one hundred and seventy acres of land, more or less, by settlement and improvement right, under his agreement with Thornton, Paxton, Clark, and Baskins, in equitable fee-simple; in pursuance of which settlement and improvement right and of his agreement with the aforesaid original settlers and grantees, the said Steen entered upon the Big Island, built a house near the west side of the island, and went to live and reside there, and did live and reside there, and did hold, as his own property, in equitable fee simple, one hundred and seventy acres of the island, laid off and bounded by lines and corners, from that time, to wit, 1750, forward, with the knowledge, consent, and approbation of the proprietors.

28. Your orator further shows, that the aforesaid grantees of and settlers and improvers on the Big Island No. 3, to wit, Joseph Thornton and Michael Paxton together, near the north or upper end of said island, George Clark, near the river shore or east side of the island, and near the midway distance from the north to the south end of the same, Alexander Steen, near the centre of the island, on the west or branch side of the same, and Francis Baskins, near the lower or south end of the island, respectively continued to hold, occupy, live, and reside upon the island, and to hold their respective portions of the same, as marked and laid out by lines and corners, amongst themselves, including the whole and every part of the island, from the date of the grant of the island, and from the time of their respective original settlements upon the island, with the knowledge, approbation, and consent of the proprietors, until in or about the month of August, in the year 1755. At which last-mentioned period, the Indian savages, after the disaster of Braddock's Field, having laid waste the white settlements on the Susquehanna and Juniata Rivers, attacked and drove all the settlers from the Big Island, killing many persons in the neighborhood of the Big Island, and amongst others James Baskins, the brother of Francis (James living at that time on the island now called Duncan Island). That the settlers upon and owners

of the Big Island, when they fled from the Indians, took refuge in a military post, called Fort Hunter, about four miles above where Harrisburg now stands. Fort Hunter being at that day the extreme western military station of the then Province of Pennsylvania, and of the present United States.

29. That Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, and Alexander Steen, as soon as they fled the island, and took refuge in Fort Hunter, joined the military force of the Province, then stationed on the Susquehanna, for the defence of the western frontier, as soldiers, and all continued to bear arms in defence of the country along the western border, until the close of the war in that quarter, with the exception of Michael Paxton, who fell in battle, fighting against the Indians, in the fall of 1755, near where the town of Selin Grove now stands, in what is called in the history of Pennsylvania, the battle of the Mahony.

30. Your orator further shows, that the danger to white people was so great, from the hostility of the Indians, that it was impossible for any of the settlers on the Big Island, who had fled from the Indians, as aforesaid, safely to return to their settlements on the island before the year 1760, even for the purpose of repairing their houses and fences; and that they could not safely return to the island, to dwell on the same, before the spring of the year 1761, on account of the imminent danger to their lives, arising from the hostility of the savage nations, at that time at war with the Province of Pennsylvania.

31. Your orator further shows, that in the year 1760, although the war with the savages still continued, and did not cease until the year 1763, the settlers on the Big Island, to wit, Joseph Thornton, (Michael Paxton who was, in his life, a joint tenant with Joseph Thornton, of the north end of the island, being dead,) George Clark, Francis Baskins, and Alexander Steen, all and respectively returned to the Big Island, repaired their houses and fences, which had fallen to decay in the absence of the owners; and early in the spring of 1761, Joseph Thornton returned to his house and farm, near the head of the Big Island, and continued to reside there from that time forward, with the knowledge, consent, and approbation of the proprietors.

32. That at the same time, to wit, in the spring of the year 1761, George Clarke returned to his house and farm, on the river or eastern side of the island—near the middle of the island, and continued to live and reside there from that time forward, with the knowledge, consent, and approbation of the proprietors.

33. That at the same time, early in the spring of 1761, Alexander Steen returned to his house and farm, on the west or branch side of the island, and near the central part of the same, and continued to live and reside there from that time forward, with the knowledge, consent, and approbation of the proprietors.

34. That early in the spring of 1761, Francis Baskins returned to his house and farm, near the south or lower end of the island, and continued to live and reside there from that time forward, with the knowledge, consent, and approbation of the proprietors.

35. And that the aforesaid original settlers and improvers on the island, to wit, Joseph Thornton, George Clark, Francis Baskins, and Alexander Steen, all lived and resided on the Big Island No. 3, and claimed, held, and occupied the whole and every part of it as their own property, in equitable fee simple, in four several and distinct tracts, as defined by lines and boundaries, agreed upon and known amongst themselves under their grant, from that time forward, with the knowledge, consent, and approbation of the proprietors.

36. Your orator further shows, that at the time the aforesaid settlers were driven from the Big Island, in the year 1755, they each and all had small farms, cleared and fenced in, around and about their several and respective houses, on the island, and fruit-trees planted, for the purpose of making their respective dwellings their places of permanent abode, and the means of supporting themselves and their families.

37. Your orator further shows, that on the 13th day of October, in the year 1760, the then proprietary government of Pennsylvania, by its agent, James Hamilton, Esq., Lieutenant-Governor of the Province, issued an order or warrant to Nicholas Scull, the then Surveyor-General of the Province, requiring and commanding him to survey, for the use of the proprietary, the one-tenth part of all the lands thereafter to be surveyed in the Province. In which order or warrant it was commanded and ordered to the Surveyor-General, as follows:

38. "These are, therefore, to authorize and require you, as soon as conveniently may be, to survey, or cause to be surveyed, for our proper use and behoof, as well so much of the quantity of five hundred acres, out of every township or tract of five thousand acres, already laid out in our said Province, as yet remains vacant, unappropriated, in order that the deficiencies in that respect may be made up to us, as also to survey for our use the said quantity of five hundred acres in every township or tract of five thousand acres, hereafter to be surveyed and laid out in our Province, and that in such future surveys so to be made, you take particular care to survey for our use, the several unappropriated islands in the rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in our said Province, and make returns from time to time of the same, into our Secretary's office for our use;" which warrant or order is now in the Office of the Surveyor-General of the State of Pennsylvania, a certified copy of which is ready to be produced, as this Court shall direct.

39. And your orator shows, that on the 13th day of November, in the year 1760, the island called the Big Island, Baskins' Island, M'Elcar's Island, or Island No. 3, lying near the mouth of the

Juniata River, in the Susquehanna River, was fraudulently entered upon by one John Armstrong, acting as, and calling himself a deputy of the Surveyor-General of the Province of Pennsylvania; which said Armstrong then and there, to wit, on the 13th day of November, in the year 1760, fraudulently surveyed the same Big Island, No. 3, to and for the use of the proprietors, containing, according to the return of the surveyor, 675 acres, and allowances of 6 per cent.; and fraudulently caused the said survey of the Big Island, No. 3, to be returned to the Land Office for the use of the proprietors, as the survey of a vacant and unappropriated island, under and by color of the aforesaid general warrant of the 13th day of October, 1760, and fraudulently ordered the said survey to be placed in the office of the Surveyor-General, as will more fully appear by the warrant and survey, and the returns upon the same, remaining filed of record in the office of the Surveyor-General of the Commonwealth of Pennsylvania; duly certified copies of which warrant and survey, and the returns of the same, are ready to be produced, as this Court shall direct. The said Deputy Surveyor, the proprietors, and the Surveyor-General of the Province, well knowing at the time of the making the survey of the Island No. 3, and of the return of the survey to the office, that the island had been appropriated by grant, settlement, and improvement, as set forth in this bill, before the 13th day of October, 1760, to wit, on or about the first day of September, in the year 1749, by George Clark, Michael Paxton, Joseph Thornton, and Francis Baskins, and which your orator prays leave to give in evidence in this cause.

40. And your orator shows, that after the return of Joseph Thornton to his house, improvement, and settlement, near the head of the Big Island, in the year 1761, he renewed his clearing of the forest from and cultivation of his part or portion of the island, claiming the same in his own right, and as survivor of Michael Paxton; being the same 300 acres on which he and Paxton had settled in the year 1749, as joint tenants, and continued to live and reside there, until in or about the year 1767, with the knowledge, consent, and approbation of the proprietors.

41. In or about which year, 1767, Joseph Thornton, for a valuable consideration, sold his part and portion of the Island No. 3, being about three hundred acres, more or less, to Patrick M'Elcar, and his heirs in fee-simple, and delivered the possession thereof to Patrick M'Elcar. It being the same land which Joseph Thornton held under the grant to himself and Michael Paxton, as joint tenants, as above set forth in this bill, and which was settled upon and held by settlement and improvement, by Joseph Thornton and Michael Paxton, as joint tenants, as above set forth in this bill; the right and title of Michael Paxton, who died without either wife or children, having survived to Joseph Thornton. That soon after the sale and delivery of possession as aforesaid, Joseph Thornton removed from the Island No. 3, and went to places unknown to your orator.

42. That immediately after Joseph Thornton left the Big Island, that is to say, in or about the year 1767, Patrick M'Elcar, in virtue of his purchase from Joseph Thornton, of that part of the Big Island on which Joseph Thornton had lived, from and since the year 1749, moved with his family to the house, then lately occupied and owned by Joseph Thornton, entered into and upon the lands which he had so purchased of Joseph Thornton, by virtue of his purchase, and held and occupied the house and land as his own, and continued to live and reside there, as the owner of the house and of the said 300 acres of land, by and with the knowledge, consent, and approbation of the proprietors, as it had been jointly held and occupied by Joseph Thornton and Michael Paxton, in the lifetime of Paxton; and, as it had been held and occupied by Joseph Thornton, since the death of Paxton, in equitable fee-simple, until the death of Patrick M'Elcar, which happened on or about the first day of January, in the year 1797, the part held by Patrick M'Elcar being about 300 acres, the upper or northern part of the island.

43. Your orator further shows, that Patrick M'Elcar, in his lifetime, had acquired right and title to, by purchase in fee-simple and possession of, a small portion or tract of the Big Island, containing about fifty acres, more or less, part of the original settlement right of George Clark, adjoining the lands of George Clark and other lands of Patrick M'Elcar, on the Big Island.

44. Your orator further shows, that the deeds or other writings (if any ever existed) by which the said tract of 50 acres of land, more or less, was conveyed to Patrick M'Elcar by George Clark, the elder, have been lost by time and accident, and cannot be produced to this Court.

45. Your orator further shows, that Patrick M'Elcar had been in peaceable possession of the said 50 acres of land, for a long time previous to his death, and had occupied it as his own, either by himself or his tenants, and that at the time of the death of Patrick M'Elcar, Thomas M'Elcar, one of the sons of Patrick, lived on and resided upon this tract of fifty acres, adjoining lands of George Clark and other lands of Patrick M'Elcar, on the island, as the tenant of Patrick M'Elcar.

46. Your orator further shows, that the deed of conveyance from Joseph Thornton to Patrick M'Elcar, for the 300 acres of land, part of the island, if any such deed ever existed, has been lost by time and accident, and cannot now be produced before this Court.

47. Your orator further shows, that previous to the death of Patrick M'Elcar, he made his last will and testament, by which he devised the whole of his real estate, in and upon the Big Island, to his sons, Jacob, Peter, Daniel, Martin, and Thomas M'Elcar, as appears by the last will and testament of Patrick M'Elcar, bearing date the 25th day of December, in the year 1795, which was duly admitted to probate, and recorded in the office of the Register of Wills, in and for the County of Dauphin, and there remains of record to this day, a duly

certified copy of which last will and testament is now in the possession of your orator, ready to be produced, as this Court shall direct, and which your orator prays leave to give in evidence in this cause.

48. Your orator further shows, that immediately after the death of Patrick M'Elcar, that is to say, on or about the first day of January, 1797, his sons and devisees, to wit, Jacob, Thomas, Daniel, Martin, and Peter M'Elcar, entered into and took possession of all the lands which belonged to Patrick M'Elcar in his lifetime, in and upon the Big Island, being about 350 acres, more or less, and held, used, owned, and occupied the same, as their own property, under the will of their father, Patrick M'Elcar, until on or about the first day of June, 1802, it being the same 300 acres originally held by Thornton and Paxton jointly, and the 50 acres which Patrick M'Elcar acquired from or under the title of George Clark.

49. Your orator shows, that after George Clark returned to his house and farm upon the Big Island, in the spring of the year 1761, he continued to live and reside there, to clear away the forest, and cultivate and improve his land and farm on the east side of the Big Island, near the middle of the same, with the knowledge and consent of the proprietors, until the time of his death, which happened in or about the year 1767.

50. Your orator further shows that immediately after the death of George Clark, the elder, who first settled on the Big Island, in the year 1749, George Clark, the younger, the son and heir-at-law of George Clark, the elder, came into possession of that part of the island which had belonged to and been occupied by George Clark, the elder, in his lifetime, and George Clark, the younger, made it his home and place of residence from the death of his father, and continued to occupy and cultivate the land as his own, with the knowledge and consent of the proprietors, until about the first day of June, 1802.

51. That after Alexander Steen returned to his house, residence, and settlement-right, on the Big Island, on the west side of the same, early in the spring of 1761, he continued to live and reside there, and to clear and cultivate the land as a farm, holding and occupying, in equitable fee-simple, the quantity of 170 acres, more or less, of the island, by virtue of his original settlement-right, procured by him in the year 1750, from Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, and so continued to reside on, cultivate, and occupy, as his own property, in equitable fee-simple, the said tract of 170 acres, with the knowledge, consent, and approbation of the proprietors, until in or about the year 1770.

52. That in or about the year 1770, Alexander Steen sold his tract of 170 acres of land on the island for a good and valuable consideration, to one Joseph Rotten, including his settlement-right, and delivered the possession to Rotten.

53. That immediately after his purchase, Joseph Rotten entered

into possession of the tract of 170 acres of land so purchased by him of Alexander Steen, and lived and resided there, holding the same in equitable fee-simple, from that time forward, with the knowledge, consent, and approbation of the proprietors, until in or about the year 1775, it being the same tract of 170 acres of land purchased by Joseph Rotten of Alexander Steen. That whilst Joseph Rotten so owned, dwelt upon, and occupied the said tract of 170 acres of land on the Big Island, he cleared the forest from a large portion of it, and reduced it to cultivation.

60. That in or about the year 1775, Joseph Rotten sold the tract of land of 170 acres, more or less, on which he lived and resided, upon the Big Island, to one John Mellen, for a good and valuable consideration, and delivered the possession thereof to the purchaser. That immediately after his purchase from Rotten, John Mellen entered into and took possession of the tract of about 170 acres of land on the Big Island, so purchased by him of Rotten, being the same place held by Alexander Steen formerly, including the house, farm, settlement, and improvement-right, and went to live and reside there, and held, used, and occupied it as his own, in equitable fee simple, from that time forward, until in or about the year 1780, with the knowledge, consent, and approbation of the proprietors.

61. That in or about the year 1780, John Mellen sold, for a valuable consideration, the said tract of 170 acres of land on the Big Island, including the house, farm, and settlement-right, in and upon which he resided, to one Robert Boyd, and delivered the possession thereof to Boyd.

62. That immediately after John Mellen sold to Robert Boyd, Boyd entered into and took possession of the tract of 170 acres of land, more or less, on the Big Island, on which John Mellen had resided as aforesaid, and lived and resided there from that time forward, with the knowledge and consent of the proprietors; claiming and holding the said tract of 170 acres of land under and in virtue of the original settlement-right of Alexander Steen, made there before the year 1775, together with the house, farm, and appurtenances, in equitable fee-simple, from that time forward, with the knowledge, consent, and approbation of the proprietors, until the period of his death, which happened in or about the year 1785. That before his death, Robert Boyd made his last will and testament, and appointed Wm. Cook and Geo. Clark his executors, with power to sell the land on which he resided on the island, containing 170 acres, more or less.

63. That immediately after the death of Robert Boyd, in the year 1785, William Cook, his sole acting executor, entered into and took possession of the tract of 170 acres, more or less, on the Big Island (where Robert Boyd had lived and died, and on which Alexander Steen had formerly lived), and held the possession of the said 170 acres,

more or less, with the knowledge, consent, and approbation of the proprietors, until the year 1795.

64. That in or about the year 1795, William Cook, as executor of Robert Boyd (George Clark having refused to act in the executorship, and having renounced his right as executor), sold and conveyed the tract of 170 acres of land on the Big Island, on which Robert Boyd lived and died, with the house, farm, and appurtenances of the same, to Peter M'Elcar and Daniel M'Elcar, for a full and valuable consideration by deed, which deed, dated in or about 1795, is lost by time and accident, and cannot be produced to this Court.

65. Which last will and testament of Robert Boyd, dated the 13th day of May, in the year 1785, remains of record in the office for the registry of wills, in and for the County of Dauphin, in the State of Pennsylvania, a duly certified copy of which, with the declination of George Clark to serve as executor, is now in the possession of your orator, ready to be produced, as this Court shall direct, and which your orator prays leave to read in evidence in this cause.

66. That immediately after the purchase of the land as aforesaid of Cook, the executor of Boyd, by Peter and Daniel M'Elcar, Peter and Daniel M'Elcar entered into and took possession of the same tract of land on the island, containing 170 acres, more or less, with the house, farm, settlement and improvement-right thereto attached, in the year 1795, and continued to possess, hold, and occupy the said tract of land, 170 acres more or less, with the appurtenances, from that time forward, in equitable fee-simple, until on or about the first day of June, in the year 1802, with the knowledge, consent, and approbation of the proprietors.

67. That in or about the year 1778, Francis Baskins, one of the original possessors of the Big Island, and who settled on the same in the year 1749, under the grant and with the consent of the proprietors, died, in peaceable possession of his original improvement and settlement-right upon the Big Island, No. 3, or Baskins' Island, in the River Susquehanna, with all the houses, cleared lands, orchards, and other improvements on the same, together with three hundred acres of land, more or less, near the south or lower end of the island, as held by him in equitable fee simple under the grant of the proprietors.

68. That, at the time of his death, Francis Baskins had a son, named William, and a son-in-law, named John Diven, who was married to Peggy, a daughter of Francis Baskins. That immediately before the death of Francis Baskins, he divided the tract of 300 acres of land, more or less, which he held on the Big Island, between his son, William Baskins, and his son-in-law, John Diven, by lines and corners on the island, and in consideration of love and affection, gave them possession of the said 300 acres.

69. That, in pursuance of such gift, his son, William Baskins, and his son-in-law, John Diven (claiming the aforesaid 300 acres, more

or less, on which Francis Baskins lived and died, upon the island, as the heirs-at-law of Francis Baskins), entered into and took possession of the said 300 acres of land on the Big Island, and divided the same between the said William and John, as the heirs-at-law of Francis Baskins, and held the same 300 acres of land, more or less, in equitable fee-simple, in the same manner, and by and under the same title, by which Francis Baskins held and possessed the same, from the year 1749 down to the time of his death, in or about 1778, and that William Baskins and John Diven held and enjoyed the undisturbed possession of the 300 acres of land, more or less, which had belonged, as aforesaid, to Francis Baskins, on the Big Island, until on or about the first day of June, in the year 1802, with the knowledge and consent of the proprietors, in equitable fee-simple.

70. That, from the time when Joseph Thornton, Michael Paxton, George Clark the elder, and Francis Baskins, first entered upon and took possession of the Big Island, and every part of the same, and built houses upon it, and made it the place of their permanent settlement and abode, in the month of September, in the year 1749, down, until on or about the first day of June, 1802, they, Joseph Thornton, Michael Paxton, George Clark the elder, and Francis Baskins, and their heirs and assigns, or those claiming under them, in virtue of their right, and deriving title from them, held, possessed, and enjoyed the Big Island No. 3, M'Elcar's or Baskins' Island, holding and claiming the same, in equitable fee-simple, under and by the original grant, settlements, and improvements, commenced and made as above set forth in this bill, in the month of September, 1749, and continued to claim, occupy, and hold the island, and every part of the same, from the month of September, in the year 1749, down, until on or about the first day of June, in the year 1802, in equitable fee-simple, with the knowledge, consent, and approbation of the proprietors.

71. And your orator expressly states, that during the whole of the period, from the year 1749 until the year 1802, neither the proprietaries of Pennsylvania, nor any member nor branch of the Penn family, their servants or agents, ever pretended or alleged any claim, or color of claim, to the Big Island, or any part thereof (except the sum of $41 33⅓, with interest for each and every hundred acres thereof, as the purchase-money due to the proprietaries on the common terms), until the time of the pretended claim of Thomas Duncan, Edmund Physic, and J. R. Coats, to the Big Island, most unjustly made, as hereinafter set forth in this bill of complaint, in the years 1798, 1800, 1801, and 1802.

72. Your orator further shows, that during the whole of the period of fifty-two years, from the year 1749 until the year 1802, the several farms on the island (except during the period between the years 1755 and 1761, when the inhabitants of the island were driven therefrom by the hostile savages) were kept in a constant state of cultiva-

tion and tillage, the fences were kept in repair, and the houses were constantly occupied by the owners of the same, as their dwellings.

73. That the Big Island, M'Elcar's Island, Baskins' Island, or Island No. 3, lies in one of the most public and conspicuous places in the State of Pennsylvania.

74. That during the whole of the aforesaid period of 52 years, the island, with the farms, houses, and other improvements upon it, together with its inhabitants, lay in full view of all persons who travelled the shores, or navigated the waters of the Juniata and Susquehanna rivers, near the mouth of the Juniata. That from the time of the earliest white settlements on the Susquehanna and Juniata Rivers, the great roads leading north and northwest from the lower parts of the Susquehanna River, have led, and yet lead, the traveller within full prospect of this island.

75. That the Big Island, No. 3, is at the junction of the Susquehanna and Juniata Rivers; that it is the largest and most valuable of all the islands in the Susquehanna River; that it was a place of great notoriety, whilst the country was yet in the possession of the Indians; and that at the time of the purchase, on the 22d of August, 1749, there was an Indian town on this island.

76. That neither the proprietors, their servants, officers, nor agents, could at any time, after the year 1749, pass either by land or by water, along the great highways of Pennsylvania, which encompassed this island, without seeing upon it the farms, the houses, the habitations, the people who dwelt there, and all the other evidences of the permanent residence and abode of an industrious population, busy in cultivating the soil.

77. That the original settlements and improvements upon this island, were made in the year 1749, by Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, by and with the authority, knowledge, consent, approval, permission, and approbation of the then proprietors of the Province of Pennsylvania, and of the agents, servants, and officers of the then proprietors, and under a grant from the proprietors.

78. And that Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, in the year 1749, entered upon and took possession of the island, and there erected and built their dwelling-houses, in which they afterwards resided, and that Thornton, Paxton, Clark, and Baskins, held and possessed the whole and every part of the island, claiming the same by grant, settlement, and improvement-right, in equitable fee-simple, under the grant and permission of the proprietors.

79. And that they cultivated and improved the island, with the like knowledge, consent, authority, and approbation of the proprietors. And that those persons who severally came into possession of the island after the year 1749, under the titles and settlement-rights of Joseph Thornton, Michael Paxton, George Clark the elder, and Francis Baskins, as set forth in this bill, held, occupied, claimed, and

cultivated the island, and every part of it, in equitable fee-simple, with the like knowledge, consent, authority, and approbation of the proprietors of Pennsylvania, their officers, agents, and servants, subject only to the payment of 15*l.* 10*s.*, Pennsylvania currency, for each and every hundred acres thereof, to the proprietors, as purchase-money.

80. That at all times, after the year 1749, there were at least four separate and distinct dwelling-houses and farms, occupied and cultivated by the owners and claimants of the same, on this island (except between the years 1755 and 1761). That whole generations of men lived and died upon this island, holding and claiming the same as their property in equitable fee-simple, as stated in this bill, and that during the whole period of fifty-two years, from 1749 down to the month of June, 1802, the proprietors, their servants, and agents, yearly and every year saw and observed the owners and possessors of Island No. 3, residing on the same, building houses there, clearing and cultivating farms upon it, and exercising all the rights and acts of ownership over it, and never challenged the title of the possessors and occupants of the island to the same.

81. That during all the period of 52 years, from 1749 to 1802, neither the proprietors nor their agents ever paid any part or portion of the public taxes of this island, No. 3; nor was the island ever assessed by the county or township assessors, as the property of the proprietors, nor did the owners and occupants of the Island No. 3, as stated and set forth in this bill, ever pay any rent to the proprietors for the island, or in any way acknowledge or admit that the island belonged to the proprietors, until the period of the fraudulent entry of Thomas Duncan and his agents upon the island, as hereinafter stated.

82. Your orator states that in all cases in which the former proprietors of Pennsylvania intended or desired to appropriate any portion of the vacant and unappropriated land of the Province to their own separate use and benefit, and to prevent individuals from appropriating it to individual use, either by warrant or settlement, it was the practice and usage of the proprietors to give notice to the public of such their intention to withdraw any portion of the vacant land of the Province from the general mass and appropriate it to their own use, by some written order, warrant, instruction, or memorial, filed amongst the public documents of the Land Office.

83. That until the proprietors had so manifested their intention to withdraw any portion of the vacant land of the Province from the general mass, the land remained liable to be appropriated by actual settlement and improvement, on the common terms and at the common price, as will appear by the ancient usage and custom of the Provincial Land Office of Pennsylvania, by the judicial decisions of the Courts of Pennsylvania, by the judgments of the Circuit Court of the United States, for the District of Pennsylvania, and by the decrees of the Supreme Court of the United States.

84. Your orator states that at no period previous to the year 1755, were any islands sold in the River Susquehanna by the proprietors for a greater price than $41 33⅓ per hundred acres, and in proof of this, he relies upon the absence of all evidence, in the Land Office or elsewhere, to prove that either in or before the year 1755, the proprietors of Pennsylvania either claimed to hold the islands in the Susquehanna generally, or this Big Island, No. 3, in particular, as any part of their private estates, or proprietary-tenths, or manors, or that in or previous to the year 1755, the proprietors sold the island in the Susquehanna River at and for a higher price than that at which they sold their lands on the shores of the River Susquehanna, in the neighborhood of the islands.

85. And your orator relies on the want of all evidence in the Land Office or elsewhere, to show that in or before the year 1755, at any time the islands in the Susquehanna River, lying within the Indian purchases, were not open to settlement and improvement, in the same manner and at the same price as other lands on the main shore in the neighborhood.

86. Your orator states, that in or about the month of March, in the year 1798, Peter M'Elcar, one of the sons and devisees of Patrick M'Elcar, made a lease for the term of three years, to his brothers Daniel and Martin M'Elcar, of that portion of the Big Island which was devised to Peter by his father Patrick; that the lease was in writing, signed by Peter as lessor, and by Daniel and Martin as lessees, by which lease the lessees agreed to pay to the lessor a certain annual rent of one-third of the produce of the land, for the period of three years, and to surrender the demised premises to the lessor at the end of the term.

87. That in pursuance of the lease, the lessees entered into the premises demised, and became and were the tenants of Peter M'Elcar, of the demised premises; that the term commenced on or about the first day of April, 1798, and was to terminate on or about the first day of April, 1801.

88. That the written lease has been lost by time and accident, and cannot be adduced before this Court, wherefore your orator prays leave to introduce depositions to prove the contents, date, and terms of the said lease, and the loss of the same.

89. That on or about the first day of April, in the year 1798, Peter M'Elcar, one of the sons and devisees of Patrick M'Elcar, and one of the owners of the Big Island, No. 3, entered into a written lease with Daniel M'Elcar, whereby Peter leased to Daniel, for the term of three years, next after the date of the lease, to end on the first of April, 1801 or thereabout, at an annual rent of one-third of the produce, the one undivided half part of about 170 acres of land on the Big Island, No. 3, being the undivided half of the farm and tract of land which Peter and Daniel M'Elcar purchased of William Cook, executor of Robert Boyd. That the lease was signed by Peter as lessor, and by Daniel as lessee of the premises.

90. That immediately after the date of the lease, Daniel M'Elcar entered into the demised premises, and became and was the tenant of Peter of the one undivided half of 170 acres of land on said island for the term of three years. And your orator states that the aforesaid written lease between Peter and Daniel M'Elcar, by virtue of which Daniel became the tenant of Peter of part of the Big Island, is lost by time and accident, and cannot be produced before this Court, wherefore, your orator prays leave to present the depositions of witnesses to prove the dates, contents, and terms of the lease, and that the same is lost.

91. That on the first day of June, 1802, there were on the Big Island four dwelling-houses, four farms, with the necessary improvements on the farms, and about three hundred acres of cleared and cultivated land, with a valuable fishery along the shores of the island, and that each of the farms contained about 75 acres of cleared land.

92. Your orator states that Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, confiding in the grant and permission of the proprietors, as above set forth, expended a large amount of time, labor, and money in improving the Big Island, by clearing the forest from and building houses thereon, with the knowledge, consent, and encouragement of the proprietors; and that their heirs, successors, and assigns, in like confidence, expended a large amount of time, labor, and money in clearing and improving said island, amounting in the whole to the sum and value of $5000, with the knowledge, consent, and approbation of the proprietors.

93. That on the first day of May, 1802, the whole of Big Island, No. 3, was in the lawful possession of Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, Peter M'Elcar, George Clark, William Baskins, and John Diven, holding and possessing the same island and every part of it in equitable fee-simple, subject only to the payment of the purchase-money of $41 33⅓, for each and every hundred acres thereof, with the interest due on the same from the first day of September, 1749, to be paid to the proprietors of Pennsylvania or their legal representatives, under the original grant and settlement-right, dated in the year 1749, as above stated in this bill.

94. Your orator shows that in or about the years 1798, 1799, 1800, 1801, and 1802, one Thomas Duncan, Esq., counsellor-at-law, now deceased, giving himself out and professing to be the attorney and agent in Pennsylvania, of the Penns and Penn family, the heirs-at-law and legal representatives of William Penn, Esq., the original grantee and proprietor of the Province of Pennsylvania, and contriving and devising, most unjustly and inequitably, to defraud and injure the owners, possessors, and occupants of the Big Island, No. 3, to wit: Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, Peter M'Elcar, George Clark, John Diven, and William Baskins, and unjustly to deprive and dispossess them of the said Big Island, No. 3, of which they were the equitable owners and possessors in fee-simple, as the said Thomas Duncan, Esq., well knew.

95. Yet, nevertheless, Thomas Duncan, Esq., together with Edmund Physic, John R. Coats, Robert Duncan, and others, whose names are unknown to your orator, for the purpose of defrauding Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, Peter M'Elcar, George Clark, John Diven, and William Baskins, and with the intent of expelling them from their possession of the Big Island, No. 3, and for the purpose of inequitably inducing the possessors of the island to believe that they had no valid, legal, or equitable title to the island, and for the purpose of causing and procuring the possessors of the Big Island, No. 3, to surrender the possession of the island to Thomas Duncan, Esq., without any price or just consideration for the island or of the several parts of the same respectively, held and possessed as aforesaid by the several owners and possessors of the same in equitable fee-simple, and for the purpose of alarming the owners and possessors of the Island, No. 3, so as to induce them to leave the same, and surrender the possession thereof to Thomas Duncan, Esq., and for the purpose of inequitably inducing the aforesaid owners and possessors of the island, ignorantly and injuriously to themselves, to believe that they had no right or title to the island, or to any part of the same, in either law or equity.

96. And Thomas Duncan, Esq., well knowing in fact that Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, Peter M'Elcar, George Clark, William Baskins, and John Diven, were uneducated and illiterate men, farmers and fishermen by occupation, ignorant of the law regulating real estates in Pennsylvania, and of the titles to lands, and of the facts and proofs necessary to show a grant of land by the proprietors, and unacquainted with the facts or the proofs which were sufficient in law or equity to support and establish a good and perfect equitable right to lands and premises by settlement and improvement-right in Pennsylvania, by grant from the proprietors, commenced and continued with their knowledge and approbation.

97. And that Peter M'Elcar, immediately after the making of the leases by him, as above set forth, for his share or portion of the land on the Big Island, in the year 1798, to his brothers, Daniel and Martin M'Elcar, had removed from the Big Island, in or about the month of April, 1798, leaving the said Daniel and Martin in possession of his share or portion of the island, as his tenants, all of which premises, as aforessid, were well known to Thomas Duncan, Esq., Edmund Physic, Robert Duncan, John R. Coats, and Robert Clark, before and in the year 1799.

98. And your orator states that Thomas Duncan, Esq., was, in the years 1798, 1799, 1800, 1801, and 1802, and for a long time both before and after these years, one of the most learned lawyers and eminent men in Pennsylvania; that his opinions and declarations in all matters of both law and equity, and especially upon all

such matters of fact as were necessary and material to constitute and form a good and valid right to lands and tenements by settlement and improvement, were held and deemed to be of the highest authority by all the citizens of Pennsylvania.

99. That Edmund Physic, Esq., was a gentleman of reputation in the City of Philadelphia, who had long held himself out to the public to be the agent of the Penn family in Pennsylvania, the legal representatives of the original grantee, William Penn, Esq.

100. That Robert Clark was an innkeeper, who resided near the Big Island, was well acquainted with the owners and possessors of the island, and was regarded by them as greatly superior to themselves in knowledge and learning, and was a man of better education and information than any of the inhabitants of the island.

101. That John R. Coats was a gentleman of reputation, lived in Philadelphia, and acted as the agent of the Penn family, the representatives of William Penn, the original grantee of the Province of Pennsylvania. And that Robert Duncan was a brother of Thomas Duncan, Esq., residing in Carlisle, and possessing the reputation of great knowledge.

102. And your orator states that, in pursuance of the aforesaid fraudulent intention and design of Thomas Duncan, Esq., Edmund Physic, Esq., Robert Clark, Esq., John R. Coats, Esq., and Robert Duncan, Esq., Thomas Duncan, Esq., and Edmund Physic, on or about the 12th day of July, in the year 1799, fraudulently caused and procured John R. Coats and Robert Duncan to make a forcible and inequitable entry in, over, and upon the Big Island, No. 3, against the will and consent of the owners, occupants, and possessors of the island, and then and there fraudulently to give a verbal and written notice to all the owners, inhabitants, and possessors of the Big Island, No. 3, that the owners, occupants, and possessors of the Big Island, No. 3, had no right or title to the same, in either law or equity, but that the same island belonged to and was the property of John Penn and Richard Penn, the late proprietors. For the purpose of deceiving the owners, occupants, and possessors of the Big Island, No. 3, and of inducing them to believe that the island did belong to the Penns, and that the occupants, owners, and possessors of the island had no right or title to the same, in either law or equity, all of which was most fraudulent and against equity, whereby the said George Clark, William Baskin, John Diven, and the said Thomas, Jacob, Daniel, Martin, and Peter M'Elcar, the owners and possessors of the Big Island in equitable fee-simple, were greatly defrauded, and induced, ignorantly and erroneously, to believe that they had no right nor title whatever to the Big Island, No. 3, in either law or equity, and then and there, ignorantly and erroneously, to their own great harm, to believe that the Big Island, No. 3, and every part of it was the right and property of the Penns, the late proprietors, in both law and equity.

103. That, in pursuance of the aforesaid fraudulent design, Thomas Duncan, Esq., on or about the 19th day of December, in the year 1799, fraudulently procured Edmund Physic inequitably to make, execute, and deliver to the said Thomas Duncan, Esq., a certain paper writing, called a deed of bargain and sale or conveyance of land, purporting to be made and executed by John Penn and Richard Penn, heirs and legal representatives of William Penn, Esq., the grantee and first proprietor of Pennsylvania, by their attorney, Edmund Physic; by which fraudulent deed, John Penn and Richard Penn, heirs and legal representatives of William Penn, Esq., by their attorney, Edmund Physic, undertook and purported to convey to Thomas Duncan, Esq., and his heirs and assigns, in substance as follows, to wit:

104. "This indenture, made the 19th day of December, in the year of our Lord one thousand seven hundred and ninety-nine, between the Honorable John Penn, of Stoke Poges, in the County of Bucks, in the Kingdom of Great Britain, and the Honorable Richard Penn, of Queen Ann Street West, in the Parish of St. Mary Le Bone, in the Kingdom of Great Britain, by Edmund Physic, Esq., of Philadelphia, their attorney, duly constituted by letter of attorney, bearing date the 14th day of March, in the year one thousand seven hundred and ninety six. Witnesseth, that the said John Penn and Richard Penn, by their attorney, Edmund Physic, for and in consideration of the sum of seven hundred pounds, do grant, bargain, and sell, release, and convey, to Thomas Duncan, his heirs and assigns, all that part of Island No. 3, situate in the River Susquehanna, at the mouth of the Juniata River, in Pennsylvania, surveyed on the thirteenth day of November, one thousand seven hundred and sixty, in pursuance of a warrant dated the thirteenth day of October, one thousand seven hundred and sixty, which part is now in the possession of Peter M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Jacob M'Elcar, and supposed to contain three hundred and fifty acres, be the same more or less, and being the upper part of the said island, which said island has generally been called Baskins' Island, and contains in the whole six hundred and seventy-seven acres and allowance, the lower part thereof being in possession of William Baskins, John Diven, and George Clark, together with all and singular, the rights, members, and appurtenances, whatsoever, thereunto belonging or in anywise appertaining, and the reversions and remainders, issues and profits thereof;" which said fraudulent deed purported to be signed and sealed by John Penn and Richard Penn, by their attorney, Edmund Physic.

105. Your orator prays leave to exhibit a copy of the aforesaid fraudulent deed, dated the 19th day of December, in the year 1799, as last above referred to, as evidence of the fraud of Thomas Duncan, Esq., in relation to the premises charged in this bill.

106. And that Thomas Duncan, Esq., in pursuance of his fraudu-

lent intentions, and for the purpose of unjustly removing the possessors and occupants of Island No. 3 therefrom, did, in or about the month of January, in the year 1800, fraudulently gather together a large company of people, whose names are unknown to your orator, and with the said company did fraudulently enter into, over, and upon, the Island No. 3, forcibly and inequitably, and without right, without the consent, and against the will of the aforesaid owners, occupiers, and possessors of the Big Island, in the name and under the pretence of making a survey of the island, in the name and for the use of the proprietors. That Thomas Duncan, Esq., and the company of people that came with him upon the island at the same time, asserted fraudulently in the presence and hearing of the owners and possessors of the island, who then lived upon the same, that the Island No. 3, and every part of it, belonged to and was the property in both law and equity, of the Penns, the late proprietors of Pennsylvania, and that they were entitled to the possession of every part of the island.

107. And that neither Francis Baskins, George Clark, John Diven, Thomas, Jacob, Daniel, Martin, or Peter M'Elcar, had any right or title whatever to the island, but that it belonged to the Penns, in both law and equity.

108. Your orator states that Thomas Duncan, Esq., and the people that were with him at the same time, made a survey of the Island No. 3, and falsely and inequitably asserted that they had a right so to survey the island for the Penns, and that those who lived on the island had no right whatever to the same, in either law or equity, and that the owners and possessors of the island must leave it, and surrender the possession of it to the Penns, all of which was fraudulent and most inequitable, and whereby the owners and possessors of the Big Island, No. 3, as aforesaid, to wit, William Baskins, John Diven, George Clark, Thomas, Jacob, Daniel, Martin, and Peter M'Elcar, were deceived and misled, of and concerning their right and title to Island No. 3, most inequitably.

109. Your orator shows, that in or about the month of March, in the year 1800, Edmund Physic, of Philadelphia, confederating with Thomas Duncan, Esq., and giving out and representing himself to be the agent and attorney of John Penn and Richard Penn, the heirs and legal representatives of William Penn, Esq., the original grantee of Pennsylvania, with the fraudulent intention of deceiving the aforesaid owners and possessors of the Big Island, No. 3, did, in the year 1800, apply and address himself to the aforesaid Robert Clark, and then and there advise and instruct Robert Clark to go to and upon the Big Island, No. 3, and to tell the aforesaid owners and possessors of the island, that it belonged to and was the property of the proprietors, to wit, John Penn and Richard Penn; and that they, the possessors of the island, as aforesaid, had no right or title whatever, either in law or equity, to the island or any part of it, and that if

they, the possessors of the island as aforesaid, did not come down to Philadelphia, and buy the island from him, Edmund Physic, as the agent of the Penns, he would sell it to others; that he had kept the lower part of the island for Clark, Diven, and Baskins; but that if they did not come down soon and pay him for it, he would sell to others; that he had already sold the part of the island occupied by the M'Elcars, to Thomas Duncan, and would sell the part occupied by Baskin, Clark, and Diven, if they did not come down soon and pay him, Physic, for their land.

110. That, in pursuance of the fraudulent instructions as aforesaid, Robert Clark went upon the Big Island, No. 3, in or about the month of April, in the year 1800, and then and there asserted to the aforesaid owners, possessors, and occupants of the island, that he, Robert Clark, had lately been in the city of Philadelphia, and had there seen Mr. Physic, the agent of Richard and John Penn, the proprietors; that the Big Island, No. 3, on which they lived, belonged to the Penns; and that Mr. Physic, the agent of the Penns, had told him, Robert Clark, that the Island No. 3 belonged to the Penns; and that he, Physic, had instructed him, Robert Clark, to tell the people who lived on the Big Island, No. 3, and possessed it, that if they did not come down and buy the island, he would sell it to others; that he had already sold the part occupied by the M'Elcars, to Thomas Duncan, and would sell the part occupied by Baskin, Clark, and Diven, if they did not come down soon and pay him, Physic, for the land; that the occupants and possessors of the Big Island, No. 3, had no right or title whatever to the same, and that if they did not go and purchase the land from Mr. Physic, he would sell it to another; and the said Robert Clark, then and there, in the same conversation, told the several persons living on and possessing the Big Island, No. 3, as aforesaid, that he had been instructed by Mr. Physic to deliver this message to them; and that what Mr. Physic said, was true; and that the aforesaid possessors and occupants of the Island No. 3, to wit, George Clark, Baskin, Diven, and the several M'Elcars, had neither right nor title to the island. All and every which actings and doings of them, Edmund Physic and Robert Clark, were done and performed at the instance of and in concert with Thomas Duncan, Esq., for the purpose of terrifying and alarming the owners and occupants of the Big Island, No. 3, and of inducing them falsely and erroneously to believe that they, the owners and occupants of the island, had no legal or equitable title to the same; but that the equitable as well as the legal title of, to, and in the Big Island, was vested in John and Richard Penn; and that the Penns and their agents had a right to enter into, over, and upon the Big Island, and to expel and remove the owners, occupants, and possessors of the same, at the will and pleasure of John and Richard Penn, their attorneys and agents, all of which was fraudulent, and by which the owners and possessors, in equitable fee-simple, of the Island No. 3,

were deceived and induced to go to Philadelphia, and were led to believe, by the falsehood of Edmund Physic and Robert Clark, ignorantly and erroneously, that they, the owners and possessors of the island, had no equitable right or title to the same, but that the whole island, in both law and equity, belonged to and was the property of John Penn and Richard Penn; all of which was fraudulent on the part of Thomas Duncan, Edmund Physic, and Robert Clark.

112. And your orator states, that in or about the month of April, in the year 1800, Thomas Duncan, Esq., came to the house of Francis Ellis, near to the Big Island, No. 3, and sent an agent to the several owners and occupants of the Island No. 3 (the name of which agent is unknown to your orator), and required the several owners and occupants of the island, as named in this bill, to come to the house of Francis Ellis; that the several owners and occupants of the island, to wit, the aforesaid M'Elcars, Baskins, Clark, and Diven, came to the house of Ellis, according to the request of Thomas Duncan, who was also there; that after the arrival of Thomas, Daniel, Martin, Jacob, and Peter M'Elcar, and also after the arrival of George Clark, William Baskins, and John Diven (who were, at that time, the owners and possessors of the island), at the house of Francis Ellis, Thomas Duncan, Esq., then and there, falsely and fraudulently declared and asserted, to each and all of the aforesaid owners and occupants of the island, in equitable fee-simple, as aforesaid, that the Island No. 3, on which they all lived, belonged to and was the property of him, Thomas Duncan; that, by the law, the people who lived on the Big Island and were in possession of it, had no right or title to the island whatever; that the island had belonged to the Penns, but that he (Duncan) had gotten it from Mr. Physic, who was the agent of the Penns, for services that he (Duncan) had rendered to the Penns. And Thomas Duncan then and there further told the people who lived on and possessed the island as aforesaid, severally, that the island belonged to him (Duncan), and they must leave it; that no such facts had ever taken place, as were necessary to give them a title to the island; that the island had been surveyed for the use of the Penns long before white men settled or resided on the island.

113. That if they would go away peaceably, he would make them respectively a present of twenty shillings an acre for what land they had on the island; but if they would not take that and go away from the island, and give it up to him, he would put them off by law and give them nothing. That he had them in his power, and would compel them to leave the island. That they had no title whatever to the island, or any part of it. That their settlement-rights were not worth anything. That the original settlements on the island had been made without the consent or approbation, and against the orders of the proprietors remaining of record in the land office. That he had a right to expel them by force from the island, and if

they did not go peaceably he must and would expel them. That the twenty shillings per acre, which he offered to give them, was offered merely as a present, and not as the price of the land on the island, as that already belonged to him, Duncan, and the 20 shillings was intended only as an act of kindness to them if they would give him no trouble. And, at the same time and place, Thomas Duncan told the several owners of the island aforesaid, Clark, Diven, Baskins, and the five M'Elcars, severally, that if they would go away peaceably, and leave the island to him, he would make them presents equal to twenty shillings an acre for their land on the island; whereby the owners and possessors of the Big Island, No. 3, in equitable fee-simple as aforesaid, were greatly deceived, defrauded, and induced, ignorantly, erroneously, and falsely, to believe that they had no right nor title whatever, in either law or equity, to the Big Island, No. 3, but that the same and every part of it was the property of Thomas Duncan, Esq., in both law and equity.

114. And your orator shows, that in or about the year 1800, Thomas Duncan, well knowing that the aforesaid equitable owners of the Big Island were the true and lawful owners and possessors in equitable fee-simple of the whole of Island No. 3, but fraudulently intending to deceive and dispossess the owners of the Island No. 3 of their rightful possession and enjoyment of the same, did, on or about the first day of May, in the year 1800, go upon the Big Island, No. 3, and then and there declare and assert to each of the owners, occupants, and possessors of the island, falsely and fraudulently, that they, the occupants and possessors of the island, had no right nor title to the same; that he, Thomas Duncan, was an agent of the Penns; and declared to the owners and possessors of the island, that they were mere trespassers, and had no title to that island; that he had purchased the island of the Penns; and that it then belonged to him, Duncan; that the owners and occupants of the island must leave it; that Thomas Duncan, at the same time, declared to Daniel M'Elcar and Martin M'Elcar, fraudulently, that they must become the tenants of him, Thomas Duncan, or he would immediately turn them away from the island by process of law; that, in matter of fact, they had no right or title to the island; and, at the same time and place, declared falsely and fraudulently to all the owners and possessors of the island, that from all the facts connected with their residence upon and ownership of the island, they had no right or color of title to the island, but that it belonged absolutely and entirely to him, Thomas Duncan; and that they must take a lease of him, and become his tenants, or he would immediately expel and drive them from the island.

115. That Thomas Duncan, in the same year, 1800, at or near the first of May, prevailed upon and induced Daniel and Martin M'Elcar, through fear, ignorance, and misapprehension, to believe that Thomas Duncan was the true and rightful owner of the Big Island, and

that the owners and possessors of the Big Island as aforesaid, had no right or title whatever to the same, and so being deceived by the false assertions of Thomas Duncan, Daniel M'Elcar and Martin M'Elcar, in ignorance of their rights and of their just and equitable title to the Island No. 3, and of the just and equitable title of Peter M'Elcar to his portion of the island, as above set forth in this bill, agreed to become the tenants of Thomas Duncan, of that part of the island then in the possession of Daniel and Martin M'Elcar, at the yearly rent of a few shad and a few ears of corn, to be paid to Thomas Duncan, Esq.

116. Thomas Duncan, at the same time, well knowing that Daniel and Martin M'Elcar were true and equitable owners and possessors of a part of the island, in their own right, and were the tenants of their brother, Peter, of that portion of the island which belonged to Peter, as above set forth in this bill, and that neither the Penns, the late proprietors, nor Thomas Duncan, had or could have any other claim or right upon the island or the possessors of the same, than the right to demand and receive of and from the owners and possessors of the island the sum of $41 33⅓, for each and every hundred acres of the island, with lawful interest from the first day of September, in the year 1749, as the purchase-money of the island, on the common terms, due to the late proprietors or their representatives; all of which was fraudulent and inequitable in Thomas Duncan, Esq., and whereby the owners and possessors, as aforesaid, of the Big Island, No. 3, in equitable fee-simple, were greatly deceived and misled, to their great injury, and were erroneously induced to believe and did believe that they had no right or title whatever to Island No. 3 or any part of it, but that the same island belonged entirely, in both law and equity, to Thomas Duncan, Esq., most inequitably.

117. Your orator states, that Thomas Duncan, Esq., with intent, inequitably, to remove William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, who were the owners and possessors of the Big Island, No. 3, in equitable fee-simple, from the same, and to obtain possession of the island for himself, did, on or about the 30th day of June, in the year 1800, prevail upon Edmund Physic, inequitably, to make, execute, and deliver to Thomas Duncan, Esq., a certain paper writing called an article of agreement or covenant, by and in which Edmund Physic, Esq., recited and set forth that he was the agent and attorney in fact of John Penn and Richard Penn, the late proprietors, and had lawful power and authority from John and Richard Penn to sell the lower part or half of the Big Island, on which John Diven, William Baskins, and George Clark then resided and lived, containing 345 acres and 34 perches, and in and by which article, it was set forth that John Penn and Richard Penn, the late proprietors, covenanted and agreed, by their attorney, Edmund Physic, to sell to Thomas Duncan, Esq., at the sum of forty shillings

per acre, the lower part or half of Island No. 3, whereon George Clark, William Baskins, and John Diven then lived and resided, for the purpose and with the intention of deceiving and defrauding the several owners and possessors of the Big Island, No. 3, in equitable fee-simple, as above set forth in this bill of complaint; whereby John Diven, William Baskins, George Clark, Thomas, Jacob, Daniel, Martin, and Peter M'Elcar, the equitable owners of the island, were deceived and defrauded by Thomas Duncan, and were induced and led, erroneously and falsely, to believe that they had no right or title to Island No. 3, but that the whole island and every part of it belonged to and was the property of Thomas Duncan, in both law and equity, most inequitably.

118. Your orator shows, that in the same year, 1800, Thomas Duncan, Esq., again went on the Big Island, No. 3, and then and there addressing himself to the owners and possessors of the island, to wit: Baskin, Diven, George Clark, and Thomas, Jacob, Daniel, Martin, and Peter M'Elcar (Daniel and Martin being the tenants of Peter), fraudulently, with intent to injure and mislead the owners and possessors of the Island No. 3, and to deprive them of the island, and of the possession of the same, against equity, then and there did assert to each and every one of the owners and occupants of the island, that they, to wit, William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar (Daniel and Martin being tenants of Peter of part of the island), had no right or title, or legal, or equitable claim whatever, to the island or any part of it; that the Island No. 3 had formerly belonged to the proprietors, but that he, Thomas Duncan, Esq., had bought it of the proprietors, and that the island and every part of it, then (in the year 1800), belonged to him, Duncan; that the possessors and occupants of the island could not have the island any longer, aad must leave it; that if they would go away peaceably, he would make each of them a present, but if they would not go away peaceably, he must and would expel them from the island by law.

119. That Thomas Duncan then and there declared and asserted to the owners, possessors, and occupants of the Island No. 3, falsely and fraudulently, that they were mere trespassers upon the island, and tenants at will of the proprietors and of him, Duncan; that he, Duncan, had purchased the island of the proprietors, and that it then belonged to and was the property of him, Thomas Duncan, Esq., and that all those living on the island must leave it; that they never had any right to the island; that he, Thomas Duncan, Esq., then had papers in his possession which showed and proved that the people living on the island in the year 1800, had no right or title whatever to the island, but that it always had belonged to the proprietor until he, Duncan, had purchased it of their agents. And Thomas Duncan, Esq., then and there further falsely and fraudulently asserted to the persons living on the Island No. 3, in the year 1800, that there were papers

in writing as well as other evidence existing and remaining of record in the Land Office of Pennsylvania, which showed and proved that islands in the River Susquehanna, and particularly this island, No. 3, never could be legally settled upon and improved, so as to give a right and title in equity to hold the Island No. 3 by settlement and improvement, as the property of any person or persons, other than the Penns or the proprietor's family; and that no right or title to this island, No. 3, ever vested in or belonged to Joseph Thornton, Michael Paxton, George Clark, the elder, or Francis Baskins, or in all or any of them.

120. That there were warrants, orders, instructions, and other papers remaining in the Land Office of Pennsylvania which showed and proved that all the islands in the River Susquehanna, and particularly this Big Island, No. 3, had, long before the first day of September, in the year 1749, been withdrawn from the general mass of vacant and unappropriated lands in the Province of Pennsylvania, which were open and liable to be appropriated to the separate use of individuals by settlement and improvement, by public and notorious acts of the proprietors, their agents, and government, by which all the islands in the River Susquehanna and particularly this island, No. 3, had been appropriated to the separate and exclusive use of the Penn family, the proprietors of the Province, and the proprietary government, of which public and notorious acts of appropriation of Island No. 3, to the separate and exclusive use of the proprietors, before the first day of September, 1749, Joseph Thornton, Michael Paxton, George Clark, the elder, and Francis Baskins had notice before they settled upon or improved the island, No. 3; and further said, that he, Duncan, had purchased the island of the proprietors, and that it belonged to him, and they who lived on the island and all of them must leave it; that if they would go away peaceably, and give up the possession of the island to him, and give him no trouble, he would make a present to each and every person who lived on the island and held possession of part of it, at the rate of twenty shillings per acre for so much of the island as each one held possession of.

121. But that he did not offer this twenty shillings per acre to them as the price or consideration of the land they respectively held on the island (as the whole and every part of the island already belonged to him, Thomas Duncan), but as a present and testimony of kindness and charity to them, as they were poor, and were going away peaceably from the island, without giving him trouble; but if the occupants and possessors of Island No. 3, would not go away peaceably, and leave the island without giving any trouble to him, Thomas Duncan, Esq., he must and would compel them to leave the island by martial law; all of which words and declarations of Thomas Duncan, Esq., as aforesaid, were false.

122. Whereby William Baskins, George Clark, John Diven, Tho-

per acre, the lower part or half of Island No. 3, whereon George Clark, William Baskins, and John Diven then lived and resided, for the purpose and with the intention of deceiving and defrauding the several owners and possessors of the Big Island, No. 3, in equitable fee-simple, as above set forth in this bill of complaint; whereby John Diven, William Baskins, George Clark, Thomas, Jacob, Daniel, Martin, and Peter M'Elcar, the equitable owners of the island, were deceived and defrauded by Thomas Duncan, and were induced and led, erroneously and falsely, to believe that they had no right or title to Island No. 3, but that the whole island and every part of it belonged to and was the property of Thomas Duncan, in both law and equity, most inequitably.

118. Your orator shows, that in the same year, 1800, Thomas Duncan, Esq., again went on the Big Island, No. 3, and then and there addressing himself to the owners and possessors of the island, to wit: Baskin, Diven, George Clark, and Thomas, Jacob, Daniel, Martin, and Peter M'Elcar (Daniel and Martin being the tenants of Peter), fraudulently, with intent to injure and mislead the owners and possessors of the Island No. 3, and to deprive them of the island, and of the possession of the same, against equity, then and there did assert to each and every one of the owners and occupants of the island, that they, to wit, William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar (Daniel and Martin being tenants of Peter of part of the island), had no right or title, or legal, or equitable claim whatever, to the island or any part of it; that the Island No. 3 had formerly belonged to the proprietors, but that he, Thomas Duncan, Esq., had bought it of the proprietors, and that the island and every part of it, then (in the year 1800), belonged to him, Duncan; that the possessors and occupants of the island could not have the island any longer, aad must leave it; that if they would go away peaceably, he would make each of them a present, but if they would not go away peaceably, he must and would expel them from the island by law.

119. That Thomas Duncan then and there declared and asserted to the owners, possessors, and occupants of the Island No. 3, falsely and fraudulently, that they were mere trespassers upon the island, and tenants at will of the proprietors and of him, Duncan; that he, Duncan, had purchased the island of the proprietors, and that it then belonged to and was the property of him, Thomas Duncan, Esq., and that all those living on the island must leave it; that they never had any right to the island; that he, Thomas Duncan, Esq., then had papers in his possession which showed and proved that the people living on the island in the year 1800, had no right or title whatever to the island, but that it always had belonged to the proprietor until he, Duncan, had purchased it of their agents. And Thomas Duncan, Esq., then and there further falsely and fraudulently asserted to the persons living on the Island No. 3, in the year 1800, that there were papers

in writing as well as other evidence existing and remaining of record in the Land Office of Pennsylvania, which showed and proved that islands in the River Susquehanna, and particularly this island, No. 3, never could be legally settled upon and improved, so as to give a right and title in equity to hold the Island No. 3 by settlement and improvement, as the property of any person or persons, other than the Penns or the proprietor's family; and that no right or title to this island, No. 3, ever vested in or belonged to Joseph Thornton, Michael Paxton, George Clark, the elder, or Francis Baskins, or in all or any of them.

120. That there were warrants, orders, instructions, and other papers remaining in the Land Office of Pennsylvania which showed and proved that all the islands in the River Susquehanna, and particularly this Big Island, No. 3, had, long before the first day of September, in the year 1749, been withdrawn from the general mass of vacant and unappropriated lands in the Province of Pennsylvania, which were open and liable to be appropriated to the separate use of individuals by settlement and improvement, by public and notorious acts of the proprietors, their agents, and government, by which all the islands in the River Susquehanna and particularly this island, No. 3, had been appropriated to the separate and exclusive use of the Penn family, the proprietors of the Province, and the proprietary government, of which public and notorious acts of appropriation of Island No. 3, to the separate and exclusive use of the proprietors, before the first day of September, 1749, Joseph Thornton, Michael Paxton, George Clark, the elder, and Francis Baskins had notice before they settled upon or improved the island, No. 3; and further said, that he, Duncan, had purchased the island of the proprietors, and that it belonged to him, and they who lived on the island and all of them must leave it; that if they would go away peaceably, and give up the possession of the island to him, and give him no trouble, he would make a present to each and every person who lived on the island and held possession of part of it, at the rate of twenty shillings per acre for so much of the island as each one held possession of.

121. But that he did not offer this twenty shillings per acre to them as the price or consideration of the land they respectively held on the island (as the whole and every part of the island already belonged to him, Thomas Duncan), but as a present and testimony of kindness and charity to them, as they were poor, and were going away peaceably from the island, without giving him trouble; but if the occupants and possessors of Island No. 3, would not go away peaceably, and leave the island without giving any trouble to him, Thomas Duncan, Esq., he must and would compel them to leave the island by martial law; all of which words and declarations of Thomas Duncan, Esq., as aforesaid, were false.

122. Whereby William Baskins, George Clark, John Diven, Tho-

mas M'Elcar, Martin M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Peter M'Elcar, the equitable owners and possessors of the island in fee-simple, were greatly intimidated, deluded, and induced to believe, erroneously and falsely, to their own hurt and prejudice, that the sole and entire right and title of the Big Island, No. 3, was in and belonged to Thomas Duncan, Esq., in both law and equity, and that the aforesaid owners and possessors of the island, in equitable fee-simple, had no right or title whatever to the said island, and that Thomas Duncan, Esq., had a lawful right to remove and expel them from the island at his will and pleasure; all of which was inequitable.

123. And your orator shows, that William Baskins, George Clark, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, being the only and sole owners, possessors, and occupants of the Big Island, No. 3, or Baskins' Island, in equitable fee-simple, and of every part of it, subject only to the purchase-money due to the proprietors, at the rate of $41 33⅓, with interest from the first day of September, 1749, for each and every hundred acres of the same, on the common terms, and being in full and entire possession of the Big Island, No. 3, in the year 1800, they so continued to hold and possess the Big Island until the first day of June, 1802, on which last day, they were in possession of each and every part of the said island, in equitable fee-simple, and so being in possession of the whole island, were, on or about the same first day of June, in the year 1802, so utterly deceived, misled, alarmed, and defrauded by the fraudulent, inequitable, and threatening language and actions of Thomas Duncan, Edmund Physic, Robert Clark, and Robert Duncan, that the owners, occupiers, and possessors of Big Island, No. 3, as aforesaid, were led to believe, and delusively, to their own great prejudice and injury, falsely and erroneously did believe, that they, the owners, occupiers, and possessors of Island No. 3, in equitable fee-simple, to wit, William Baskins, George Clark, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, had no right, title, claim, or even color of claim, in law or equity, of, to, or in the said island, No 3, or any part of it; and then and there erroneously, mistakenly, ignorantly, and delusively believed, from the confidence which they (the occupants of the Island No. 3), had and placed in Thomas Duncan, as a great lawyer, in Edmund Physic and John R. Coats, as the agent of the Penns, and in Robert Clark, as a supposed friend and neighbor, that the aforesaid words, declarations, and assertions of Thomas Duncan, Edmund Physic, John R. Coats, and Robert Clark, as above set forth in this bill, of and concerning the Island No. 3, and of and concerning the title of the possessors thereof to the same, were just, true, and honest, and that the whole and every one of the owners and occupants of the Island No. 3 were trespassers on the island, and tenants at will of Thomas Duncan, and that neither

William Baskins, John Diven, George Clark, Jacob M'Elcar, Thomas M'Elcar, Daniel M'Elcar, Martin M'Elcar, nor Peter M'Elcar had any right or title, in either law or equity, to the Island No. 3, nor to any part of it, and honestly, but erroneously, believed that the occupants, owners, and possessors of the Big Island, No. 3, had no right, in either law or equity, to resist the claims and pretensions of Thomas Duncan, Esq., to the possession and ownership of the Big Island, and to take immediate and forcible possession of the Island No. 3, and to expel the occupants, owners, and possessors thereof from the same by force; and the said owners, possessors, and occupants of the Island No. 3, as aforesaid, were so far intimidated by the threats of Thomas Duncan, Edmund Physic, John R. Coats, and Robert Clark, that they were greatly in fear, and truly believed that Thomas Duncan would expel them from the island by force, and that he had a right to remove them from the island by process of law, and subject them to great and grievous expense and costs, whereby they would not only lose their possession of the island, but would also be stripped and despoiled of their goods and entire personal estates and effects.

124. That in this state of fear, mistake, ignorance, delusion, and misapprehension of their rights, and of the facts upon which those rights were founded, superinduced by the aforesaid false and inequitable language and conduct of Thomas Duncan, Edmund Physic, J. R. Coats, and Robert Clark, by whom the owners, occupants, and possessors as aforesaid of the Island No. 3, were wholly deluded, they, Wm. Baskins, John Diven, George Clark, and Thomas, Jacob, Daniel, and Martin M'Elcar (Peter M'Elcar not being present), believed that the only means they had left to save themselves from their utter ruin, was to agree to the terms proposed by Thomas Duncan, Esq., to surrender up to him their lands, their farms, their houses, and their homes, and trust to his feelings of kindness and charity, by giving up to him the entire possession of the whole island, on the terms upon which he demanded it.

125. That on or about the first day of June, in the year 1802, William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar, at that time in possession of the whole island, through fear of Thomas Duncan, and in ignorance and mistake of their rights, and of the facts on which those rights were founded, and being misled and deceived by the fraud and falsehoods of Duncan, and thus delusively believing that they had no right to hold the Island No. 3, surrendered and delivered to Thomas Duncan, Esq., the sole and entire possession of the whole of the Big Island, No. 3, and of every part of the same, and left the island, with their wives, children, and effects. That Peter M'Elcar, at the time of the surrender of the possession of said island, was not an inhabitant of the island, but was in possession of about one hundred and sixty acres of the island near the upper end

of the same, by his tenants, Daniel and Martin M'Elcar, under their leases from Peter, dated in the spring of 1798. Your orator therefore states, that the owners and possessors of Big Island, No. 3, in equitable fee-simple, were removed and expelled from the said island, and the possession thereof taken by Thomas Duncan, Esq., as aforesaid, most inequitably.

126. That at the same time that Thomas Duncan removed the owners and occupants of the Big Island from the same, and took possession thereof himself, in the manner and by the means set forth in this bill, he fraudulently made a present, as he called it, of a small sum of money, to each of the owners and possessors of the island, to enable them to go to a new home, because, as he said, they were poor, and he pitied them, and was sorry to be obliged to turn them away from their homes. That the whole amount of money thus distributed by Thomas Duncan, Esq., amongst the owners and possessors of the Island No. 3, amounted to about fourteen hundred dollars.

127. That this sum of fourteen hundred dollars was divided, as Mr. Duncan pleased, amongst and between William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar, who, at that time, lived and resided on the island, and were removed and expelled from the Island No. 3 by Thomas Duncan and his agents, on or about the first day of June, in the year 1802; that on or about the first day of June, 1802, the rightful owners and possessors of the island having been so removed and expelled from the same, Thomas Duncan, fraudulently and without any consideration, entered into and took possession of the island and every part of it, against the will and without the consent of the aforesaid equitable owners in fee-simple of the Big Island.

128. That Thomas Duncan, Esq., never made any present of any kind or value to Peter M'Elcar, who was the equitable owner in fee-simple of one hundred and sixty acres of the Big Island, on the first day of June, 1802; and that Peter M'Elcar never received any sum of money or other thing of value from Thomas Duncan, Esq., for or on account of the Big Island, No. 3, or any part of it. That at the time Thomas Duncan removed and expelled the owners and possessors of the Island No. 3 from the same, and distributed the sum of about $1400 amongst them, he expressly told them that the money was a present, a charitable gift, and not at all as the price of the island or of any part of it, as the island never belonged to them, but had always belonged to the Penns until he bought it; that his object was to give them at the rate of twenty shillings an acre for the land that each one of them possessed on the island, and that the money was neither given nor received under any contract or agreement.

129. That William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar re-

ceived and accepted the said sum of fourteen hundred dollars from Thomas Duncan, Esq., as they understood and believed at the time, from the express declarations of Thomas Duncan, not as the price or consideration of their land on the island, but as a charity and benevolence bestowed upon them by Duncan, for their peaceable conduct at the time they left the island.

130. That at the time they left the island, the owners and possessors of it, all firmly, but ignorantly and erroneously, believed, from the words and declarations of Thomas Duncan and his associates, as set forth in this bill of complaint, that the island and every part of it belonged to Thomas Duncan, in law and equity, and that neither William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, nor Peter M'Elcar had any right or title to the island nor any part of it, in either law or equity; that they left the island in this state of ignorant delusion concerning their right and title to it, and received the presents of Mr. Duncan not as consideration agreed upon, but as bounty bestowed.

131. Your orator further shows, that on the first day of June, 1802, the Big Island, No. 3, was reasonably worth forty dollars per acre, for each and every acre thereof, amounting in the whole to about the sum of thirty thousand dollars.

132. That Thomas Duncan, Esq., took possession of the Big Island, No. 3, on or about the first day of June, in the year 1802, fraudulently and without any consideration, to the great and manifest harm and injury of Peter, Daniel, Martin, Jacob, and Thomas M'Elcar, and of George Clark, John Diven, and William Baskins.

133. That during all the time from the first day of June, 1802, to the first day of April, 1829, Thomas Duncan, Esq., inequitably received the rents of the Big Island, No. 3, and every part of it; and during all that time, fraudulently prevented the true and equitable owners of the Big Island from obtaining and holding the peaceable and undisturbed possession of the island; and during all that time, fraudulently prevented and hindered the true and rightful equitable owners of the island from peaceably taking and quietly enjoying the permanent possession of the island, together with the rents of the same, but at all times, from the first day of June, 1802, to the first of April, 1829, whenever the rightful equitable owners of the said island, as aforesaid, entered upon the said Island No. 3, to possess the same and enjoy the rents thereof, Thomas Duncan most inequitably removed and expelled the equitable owners in fee-simple of the Island No. 3 from the same, to the manifest injury of the equitable owners of Island No. 3, and to their great oppression and wrong.

134. Your orator states that Thomas Duncan, Esq., did, on the 12th day of July, in the year 1803, inequitably advise and procure John R. Coats, Esq., then residing in the City of Philadelphia, and

claiming to be the attorney and agent of John Penn and Richard Penn, the heirs, devisees, and representatives of William Penn, Esq., the original grantee and proprietor of Pennsylvania, to make, execute, and deliver to him, Thomas Duncan, Esq., a certain writing on paper or parchment, called a grant, feoffment, or deed of bargain and sale, purporting to be a legal and valid sale and conveyance by Richard Penn and John Penn, by their attorney, John R. Coats, to Thomas Duncan, Esq., of the lower or southern part of the Big Island, No. 3.

135. In which last-mentioned deed, dated July 12, 1803, from John R. Coats to Thomas Duncan, Esq., it is written and set forth in the body and on the face of the deed in substance as follows, to wit:

136. "Witnesseth, that whereas Edmund Physic, on the 19th day of December, 1799, attorney in fact for John and Richard Penn, did grant to Thomas Duncan and his heirs, a certain part of Island No. 3, situate in the Susquehanna River, at the mouth of the Juniata, in Dauphin County, Pennsylvania, then supposed to be in the possession of Peter M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Jacob M'Elcar, and to contain 350 acres, which said island was surveyed on the 15th day of November, 1760, in pursuance of a warrant dated October 13, 1760, called and known by the name of Baskins' Big Island. Whereas said island contains 695 acres and 32 perches; and the said Edmund Physic, on the 30th day of June, in the year 1800, did covenant to sell the remainder of the said island to the said Thomas Duncan, containing 345 acres and 34 perches, at the sum of forty shillings per acre.

137. "Now this indenture witnesseth, that the said John R. Coats, attorney in fact of the said John Penn and Richard Penn, in consideration of £690 7*s.* 6*d.*, to him in hand paid by the said Thomas Duncan, hath granted, bargained, and sold to the said Thomas Duncan, his heirs and assigns, the said 345 acres and 34 perches, being the remainder of the aforesaid Island No. 3, situate in the River Susquehanna, at the mouth of the Juniata, formerly in the possession of William Baskins, George Clark, and John Diven, in Dauphin County, in the State of Pennsylvania, with the hereditaments and appurtenances, &c." Which deed last referred to, purported to be signed and sealed by John Penn and Richard Penn, by their attorney, John R. Coats, and was fraudulent.

138. Your orator prays leave to be permitted to exhibit to this Court a true copy of the fraudulent deed last above referred to, and dated on the 12th day of July, in the year 1803, as evidence to support his charge of fraud and deceit agaidst Thomas Duncan, Esq., as contained in this bill of complaint.

139. That the fraudulent, pretended, and inequitable deed from John and Richard Penn, by their attorney, Edmund Physic, bearing date the 19th day of December, in the year 1799, to Thomas

Duncan, Esq., for the upper part of the said island, containing 350 acres, with all the contents of the said deed, was recorded on or about the 19th day of September, in the year 1807, in the office for recording of deeds, in and for the County of Dauphin, in the State of Pennsylvania, in which County of Dauphin the Big Island, No. 3, then was and is yet situate; and that the said pretended deed yet remains of record in the said office, in Book P, pages 377 and 8.

140. Which inequitable deed, as aforesaid, dated the 19th day of December, 1799, from John Penn and Richard Penn, by their attorney, Edmund Physic, to Thomas Duncan, Esq., recorded as aforesaid, was and is notice to all the world, and especially to Jacob M. Haldeman, Esq., of the right, title, and possession of the said Wm. Baskins, Geo. Clark, John Diven, Thos. M'Elcar, Jacob M'Elcar, Dan'l M'Elcar, Martin M'Elcar, and Peter M'Elcar, of, to, and in the Big Island, No. 3, and is full and perfect notice, actual and constructive, of the whole contents of the said deed, and of all facts stated in it, to all and every person, at any time since the recording of the said deed, claiming right or title to the Big Island, No. 3, through, under, or by color of the aforesaid deed, dated the 19th day of December, in the year 1799, and by which deed, Jacob M. Haldeman, Esq., and all others claiming title to the Island No. 3, under or by color of the said deed, had at all time full notice that William Baskins, George Clark, and John Diven, Peter M'Elcar, Thomas M'Elcar, Daniel M'Elcar, Jacob M'Elcar, and Martin M'Elcar were, on the 19th day of December, in the year 1799, in full and quiet possession of the whole of the Big Island, No. 3, and so being in possession of the island they had a good and perfect right and title to the island and to every part of the same in equitable fee-simple, as set forth and charged in this bill of complaint. A duly certified copy of the last-named fraudulent and inequitable deed, dated the 19th of December, 1799, now in the possession of your orator, ready to be submitted to the inspection of this Court, he prays leave to present as evidence of the inequitable possession and claim of title on the part of the present defendant, Jacob M. Haldeman, to the Big Island, No. 3.

141. Your orator further shows, that the deed dated the 19th day of December, in the year 1799, and recorded as aforesaid, was and is notice, actual and constructive, of the right and title of Peter M'Elcar and your orator to the Big Island, as set forth in this bill of complaint, to Jacob M. Haldeman, Esq., and to all others claiming the same island, under or by color of said deed, or deriving title through the same, and is notice, actual and constructive, and that the same title is yet in existance and vested in your orator.

142. And your orator shows, that the inequitable deed of John Penn and Richard Penn, by their attorney, John R. Coats, to Thomas Duncan, Esq., bearing date the 12th day of July, in the year 1803, an extract from which is above set forth in your orator's

bill of complaint, purporting to convey to the said Thomas Duncan, Esq., the lower part of the Big Island, No. 3, containing 345 acres 34 perches, in consideration of forty shillings per acre, formerly in possession of William Baskins, George Clark, and John Diven, was recorded, with all the contents and recitals of the said deed, on or about the 19th day of September, 1807, in the office for recording of deeds, in and for the County of Dauphin, in the State of Pennsylvania, in which county the Big Island was and yet is situate, and that the last-mentioned pretended deed remains so of record in the office for recording of deeds, in Book P, pages 389 and 90.

143. Which inequitable deed, dated the 12th day of July, 1803, from Richard Penn and John Penn, by their attorney, John R. Coats, to Thomas Duncan, Esq., and so recorded, was and is notice, actual and constructive, to all the world, and particularly to Jacob M. Haldeman, Esq., of the possession, right, and title of William Baskins, George Clark, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, of, to, in, and upon the Big Island, No. 3, in the River Susquehanna, in the County of Dauphin; and that they were in possession of the said island and every part of the same, on the 19th day of December, in the year 1799, and also on the 30th day of June, in the year 1800, the day of the date of the covenant referred to in said deed. And that the said William, George, and John, Thomas, Jacob, Daniel, Martin, and Peter, on the 19th day of December, 1799, and also on the 30th of June, 1800, had and held the equitable possession of the said island in fee-simple, subject only to the payment of $41 33⅓, for each hundred acres of the said island, with interest from the first day of September, 1749, to the proprietors; and that the said title is yet in existence and vested in your orator; and that the deed dated the 12th day of July, 1803, from the time it was recorded on the 19th day of September, 1807, was notice, actual and constructive, to Jacob M. Haldeman, Esq., and to all others claiming title to the said island or any part of it, by or through the pretended title of Thomas Duncan, Esq., that Thomas, Daniel, Jacob, Martin, and Peter M'Elcar, and George Clark, William Baskins, and John Diven were in possession of the island and of every pert of it, and had title to the same in equitable fee-simple, on the 19th day of December, 1799, and also on the 30th day of June, in the year 1800, and also on the first day of June, 1802, holding and possessing the same by a valid title, in equitable fee-simple, as above set forth in this bill; and that the said title still continues in existence and is vested in your orator. A certified copy of which said last-mentioned pretended deed, dated the 12th day of July, in the year 1803, recorded as aforesaid, is now in the possession of your orator, ready to be exhibited as the Court shall direct, as evidence of the inequitable claim of Jacob M. Haldeman to Island No. 3, as well as proof of the good, valid, and equitable title of your orator to the said island.

144. And your orator further states, that in the year 1799, 1800, 1801, 1802, 1803, and continually from that time until the first day of February, 1822, Thomas Duncan, Edmund Physic, and John R. Coats proclaimed and published to all the citizens of Pennsylvania, as well as to William Baskins, George Clark, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, that the islands in the Susquehanna never were the subject of settlement and improvement; and that the proprietors had never granted an island in the River Susquehanna either to settlers and improvers or to others; that no good, or valid, or equitable title could ever have been acquired to an island in the River Susquehanna by settlement and improvement; that the proprietors had never permitted any person to settle upon an island in the River Susquehanna, and to hold the same by settlement and improvement.

146. That the proprietors had, at an early period of the Provincial history of Pennsylvania, by special order or warrant, issued from the Proprietary Land Office, appropriated to their own use all the islands in the River Susquehanna, before any settlements were made on such islands; and that the proprietors could not after that grant the islands.

147. That long before the year 1760, the proprietaries of Pennsylvania, by themselves or their servants, had, by public and notorious acts, appearing of record in the Land Office of Pennsylvania, given public notice of and declared their intention to appropriate to their own use, and to withdraw from appropriation to individual use, all the islands in the River Susquehanna; all of which was false and inequitable.

148. And your orator here expressly states, that there was not, before the 13th day of October, in the year 1760, in the Proprietary Land Office of Pennsylvania or elsewhere, any order, warrant, instruction, letter, direction, memorial, or authority of any kind or nature whatsoever, by or from the proprietors or their servants or agents, by which notice was or could be given to any person that this Big Island, No. 3, in the Susquehanna River, was or had been withdrawn from the general mass of vacant land, and set apart by the proprietors for their own separate use or as part of their tenths and manors.

149. And further, that there is not now remaining in the Land Office of Pennsylvania or elsewhere, any order, warrant, letter, memorial, or direction, of a date anterior to the 13th day of October, 1760, by which the proprietors of Pennsylvania or their servants or agents, have given any kind of notice to any person that the Big Island, No. 3, otherwise called Baskins' Island, had been or was withdrawn by the proprietors from the general mass of vacant lands in the Province, and appropriated to the separate or exclusive use of the proprietors, as part of their tenths and manors or otherwise.

150. And your orator states, that no evidence exists in the Land Office of Pennsylvania or elsewhere, which proves that on the first of September, 1749, the island described and claimed by your orator in this bill of complaint, was not open to settlement and improvement, and liable to be appropriated by individuals to their own use by settlement and improvement, on the common terms of the other vacant lands of the Province.

151. And further, that no evidence can be found which proves that in the month of September, 1749, at the time Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins made their original settlements and improvements upon the Big Island, No. 3, otherwise called Baskins' Island, they or any of them had any notice, either verbal or written, of record or by parol, actual or constructive, that the Big Island, No. 3, had, in any manner or by any means, been withdrawn from the general mass of the vacant lands of the Province, and set apart or in any way appropriated by the proprietors or their authority to their own separate and exclusive use, as a part of their proprietary tenths or manors or otherwise.

152. And your orator states, that in the month of September, 1749, at the time when Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, entered upon the Big Island, it was vacant and unappropriated to the separate and exclusive use, either of individuals or of the proprietors; and that in the month of September, 1749, the Big Island formed no part of the private estates of the proprietors, nor of their separate estates, nor of their tenths or manors; and that on the first day of September, in the year 1749, at the time when Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, entered upon and took possession of the Big Island, as actual settlers, under the grant and permission of the proprietors, they, the grantees, held the whole of the island in equitable fee-simple, and so continued to hold the same as set forth in this bill.

153. And your orator shows, that William Baskins, George Clark, John Diven, Jacob M'Elcar, Thomas M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, being so expelled from the Island No. 3, on or about the second day of June, 1802, and being ignorant of their equitable right and title to the island; and being so deceived, deluded, and misled by the false and fraudulent declarations and assertions of Thomas Duncan, Edmund Physic, John R. Coats, and Robert Clark, so remained wholly ignorant of, and unacquainted with, their equitable right and title to and in the Big Island No. 3, continually, until, on, or about, the first day of February, in the year 1822; being all that time misled and deceived by the deceitful acts and declarations of Thomas Duncan and his associates as aforesaid, and believing during the whole of the said period, from the first day of June, 1802, until the first day of February 1822, by

reason of the false and deceitful words and actions of Thomas Duncan, and, from the great confidence which they reposed in the opinions and assertions of Thomas Duncan, Esq., as a great lawyer and eminent man, that they, William Baskin, George Clark, John Diven, Jacob M'Elcar, Thomas M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, had no good or valid right or title to the Big Island, No. 3, in either law or equity. And your orator states, that the fraud and deceit of Thomas Duncan, Edmund Physic, J. R. Coats, Robert Duncan, and Robert Clark, were not discovered by the equitable owners of the island as aforesaid, before the first day of February, in the year 1822.

154. Your orator further shows, that Thomas Duncan, having so taken possession of the Big Island, No. 3, and well knowing the good and equitable title of William Baskin, John Diven, George Clark, Jacob, Thomas, Daniel, Martin, and Peter M'Elcar to the island, and that they were justly entitled to receive the rents of the island, continued, nevertheless fraudulently to receive the rents of the island, from the first day of June, 1802, yearly and every year, until, on, or about, the first day of April, 1829; during all of which period of twenty-seven years, the rents of the island were yearly and every year reasonably worth seven hundred and fifty dollars per year, equal with interest at this day to fifty thousand dollars.

155. And your orator states and charges, that the moneys received by Thomas Duncan, between the years 1801 and 1830, from the rents and issues of the Big Island, No. 3, or Baskins' Island, whilst he, Thomas Duncan, inequitably held possession of the island, were far more than sufficient and enough to pay off, liquidate, and discharge the full and entire amount of the original purchase-money due and owing by the settlers upon the island to the proprietors or their legal representatives for the island, with interest on the same from the first day of September, in the year 1749, together with all legal fees due to the officers of the Land Office of Pennsylvania, and that Thomas Duncan was bound by the rules of equity, to apply a sufficient amount of the rents and issues of Island No. 3, to the payment of the purchase-money, interest, and fees due for the island to extinguish the same; and that Thomas Duncan did, out of, and with the rents and issues of the Big Island, No. 3, so received by him, pay off and fully discharge and satisfy the debt due to the proprietors of Pennsylvania, or their legal representatives, on account of the purchase-money and interest at any time due and owing by the equitable owners, in fee-simple, of the Island No. 3, as set forth in this bill, to the former proprietors of the province of Pennsylvania, or to their legal representatives, as well as all fees due to any officers or persons, for or on account of the Island No. 3.

156. And that the rents of the Island No. 3, from the first day

of June, 1802, until the first day of April, 1829, were received by Thomas Duncan, Esq., inequitably, against the will and consent of William Baskin, John Diven, George Clark, Thomas, Daniel, Jacob, Martin, and Peter M'Elcar, and against conscience; and that on or about the first day of April, in the year one thousand eight hundred and twenty-nine, Stephen Duncan, a confederate of Thomas Duncan, by the consent and agreement of Thomas Duncan, and well knowing the fraudulent means by which Thomas Duncan had obtained and held the possession of the Big Island, No. 3, and well knowing the right and equitable title of William Baskin, George Clark, John Diven, Thomas, Jacob, Daniel, Martin, and Peter M'Elcar to the island, forcibly and against equity, and against the will of Peter M'Elcar, took possession of the Island No. 3, and held the same for a long time, to wit, until on or about the first day of April, in the year 1834, and during all that time received the rents of the island of the yearly value of one thousand dollars, amounting in the whole with interest at this day to the sum of ten thousand dollars, inequitably and against conscience, to the great injury and oppression of Peter M'Elcar.

157. And that Stephen Duncan held and possessed the Big Island from the first day of April, 1829, until the first day of April, 1834, under and by color of the same fraudulent and pretended title by which Thomas Duncan had held and possessed the same island, and by no other or better title; and that Stephen Duncan had full notice, actual and constructive, before he took possession of the island, of the fraudulent manner and means whereby Thomas Duncan obtained the possession of the Big Island; and also had full notice, at the same time, of the good and indefeasible equitable right and title of Francis Baskins, George Clark, Joseph Thornton, and Michael Paxton, and of the title of those claiming under them, to the island as set forth in this bill, and especially of the title of Peter M'Elcar to the island.

158. Your orator shows, that, in or about the year 1803, Jacob M'Elcar, one of the sons and devisees of Patrick M'Elcar, died intestate, unmarried, and without issue; that Daniel M'Elcar, another of the sons and devisees of Patrick M'Elcar, died intestate in or about the year 1810, leaving a widow, —— ——, and six children, namely, Elizabeth, Isabel, Sarah, Catharine, Daniel, and Martin M'Elcar,—that Isabel intermarried with Daniel Peace, that Sarah is intermarried with James Shultz, that on the first day of February, in the year 1822, the said Elizabeth M'Elcar, Isabel Peace and Daniel Peace, her husband, Catharine M'Elcar, Sarah Shultz, and James Shultz, her husband, Daniel M'Elcar and Martin M'Elcar, the children and heirs at law of Daniel M'Elcar, the elder, deceased, by their deed of bargain and sale, under their hand and seals, for a good and valuable consideration, bargained, sold, delivered, and con-

veyed to Peter M'Elcar, and his heirs and assigns, all their right, title, interest, and claim of, to, or in the Big Island, No. 3, otherwise called Baskins' or M'Elcar's Island, with the appurtenances; and that on the same first day of February, 1822, William Baskins and John Diven, for a good and valuable consideration, by their deed of bargain and sale, under their respective hands and seals, did grant, sell, and convey to Peter M'Elcar, his heirs, and assigns, forever, all their right, title, interest, and claim to or in the Big Island, No. 3; it being the same island whereon John Diven and William Baskins formerly lived and resided, in Dauphin County, in the State of Pennsylvania, with the appurtenances, which deed of bargain and sale by and from William Baskins, John Diven, Elizabeth M'Elcar, Isabel Peace, Daniel Peace, Jr., Catharine M'Elcar, Sarah Shultz, James Shultz, Daniel M'Elcar, and Martin M'Elcar, the children and heirs-at-law of Daniel M'Elcar, as aforesaid, deceased, for all their interest, severally and respectively, in Big Island, No. 3, otherwise called Baskins' Island or M'Elcar's Island, to the said Peter M'Elcar, under the several hands and seals of the grantors, and dated on the first day of February, in the year 1822, was recorded on the 13th day of March, in the year 1840, in the office for the recording of deeds in and for the County of Dauphin, in Deed Book M, volume 2, page 74, &c., and is now in the custody of your orator, ready to be produced as this Court shall direct, and which he prays leave to give in evidence in this cause.

159. And your orator shows, that on the 25th day of January, in the year 1822, Thomas M'Elcar and Martin M'Elcar, two of the sons and devisees of Patrick M'Elcar, deceased, by their deed of bargain and sale, for a good and valuable consideration, did grant, convey, and sell to Peter M'Elcar and his heirs forever, all their right, title, interest, and claim to or in the Big Island, No. 3, which last-mentioned deed, dated the 25th day of January, 1822, was duly recorded in the office for recording of deeds, in and for the County of Dauphin, on the 13th day of March, in the year 1840, in Book M, volume 2, page 43, &c., which deed, duly entered and recorded, and now, in the custody of your orator, is ready to be produced as this Court shall direct, and he prays leave to give the same in evidence at the hearing of this cause.

160. Your orator shows, that on the 27th day of November, in the year 1822, the same George Clark, the younger, who formerly resided on the Big Island, No. 3, by his deed of bargain and sale for a good and valuable consideration, did grant and sell, release and convey to Peter M'Elcar and his heirs forever, all the right and title of the said George Clark, of, to, or in the Big Island, No. 3, which last-mentioned deed was duly recorded on the 13th day of March, 1840, in the office for the recording of deeds in and for the County of Dauphin, in Book M, volume 2, page 74, which deed, duly exe-

cuted, now in the custody of your orator, is ready to be produced as this Court shall direct, and which he prays leave to give in evidence in this cause.

161. And your orator states, that on or about the tenth day of June, in the year 1822, Peter M'Elcar, one of the sons and heirs-at-law of the aforesaid Patrick M'Elcar, deceased, in his proper person, made entry into, over, and upon the aforesaid Big Island, No. 3, commonly called M'Elcar's or Baskins' Island, and upon each and every part of the Big Island, No. 3, for the purpose of taking actual seizin and possession of the Big Island, No. 3, and for the purpose of preventing and hindering the statute of limitation from destroying, tolling, and barring the title and right of Peter M'Elcar to Big Island, No. 3; and that Peter M'Elcar, on or about the 10th day of June, in the year 1822, went in person to each and every dwelling-house upon the Island No. 3, to wit, to the houses of William Elliott, John Kauffer, John Holland, and Robert Boner, and then and there told and declared to the people at each of the houses respectively on the island, that he had come to give them notice, that the island was the island and property of him, Peter M'Elcar, and that he had come to take possession of the island, and that he did then take possession of the island; that Peter M'Elcar then told the people on the island, that they must consider themselves the tenants of him, Peter M'Elcar, and that they must not pay Mr. Duncan any more rent; that Peter M'Elcar, whilst he was so on the Big Island, No. 3, in the summer of the year 1822, about the 10th day of June, went into the orchard and pulled cherries from the trees as evidence that he had taken possession of the island; that Peter M'Elcar made his entry upon the Big Island in the summer of the year 1822, under the direction of his counsel, for the purpose and with the intent of barring and preventing the statute of limitations of 21 years of estopping and destroying his title to the said island; Henry Bowman was with Peter M'Elcar at the time he made entry into and upon the island on or about the tenth day of June, in the year 1822, and that the aforesaid entry was made in the month of June, 1822.

162. Your orator further shows, that, late in the fall of the year 1822, in the month of December, and after Peter M'Elcar had received his deed (as above set forth in this bill) from George Clark, for his part of the Big Island, No. 3, in the River Susquehanna, he, Peter M'Elcar, went, in his proper person, into, over, and upon the said Big Island, and every part of the same, for the purpose and with the intention of taking the actual seizin and possession of the said island, and of every part of it, and with the purpose and intention of barring, estopping, and preventing the statute of limitations from injuring or destroying the right and title of the said Peter to the Big Island, No. 3, and made entry upon the Big Island

and every part of it, and entered into each and every dwelling-house upon the island, and told the people at each and every house, that the island was his (the said Peter M'Elcar), that he had come to take possession of it, and did then take possession of every part of the Big Island; that the people living on the Big Island must consider themselves the tenants of Peter M'Elcar, and pay no more rent to Mr. Duncan; that, when on the Big Island, late in the fall, in the month of December, in the year 1822, Peter M'Elcar went into the orchard and pulled apples from the trees, as evidence that he took possession of the island, and stuck his staff into the grouud, and told the people there, "This island is mine, and I now take possession of it," and then and there called on the people present to take notice of his acts and words.

163. That Peter M'Elcar made entry upon the island and took possession of it late in the fall of 1822, in the month of December, under the direction of his counsel, for the purpose of barring and preventing the operation of the statute of limitations of 21 years against the title of the said Peter to Big Island.

164. Your orator shows, that Peter M'Elcar made entry in proper person into, over, and upon the said island, in like manner and for like purposes of taking possession of the said island, in each and every year for seven or eight years after the year 1822; that the entry so made by Peter M'Elcar into, over, and upon the Big Island No. 3, late in the fall of the year 1822, was in the early part of December, or toward the middle of that month, and was, after Peter M'Elcar had received his deed from George Clark; the apples in the orchard had been frozen; he made entry, at that time, into each and all of the dwelling-houses on the island, to wit, of William Elliott, John Kauffer, John Holland, and of Robert Boner, at that time tenants of Thomas Duncan, Esq., on the island; Henry Bowman was with Peter M'Elcar at the time of the entry as aforesaid.

165. Your orator shows, that on or about the third day of December, in the year 1822, Peter M'Elcar commenced an action of ejectment, in his own name, in the Court of Common Pleas of the County of Dauphin, in the State of Pennsylvania (in which County of Dauphin the Big Island, No. 3, is situate), against William Elliott, John Holland, John Cowfer, and Robert Boner, for the recovery of the possession of Big Island, No. 3; the said Elliott, Cowfor, Holland, and Boner being the tenants, at that time in possession, of the Big Island, No. 3; that the defendants, in the writ of ejectment, appeared in in the Court of Common Pleas of the County of Dauphin; and that Thomas Duncan, Esq., also appeared in the same Court; and, by leave of the Court, became also a party defendant in said action of ejectment, claiming to be landlord of the premises.

166. The original summons in which action of ejectment, was returnable to January Term, 1823, in the Court of Common Pleas of the County of Dauphin.

167. That on the 28th day of April, 1823, the said action of ejectment was transferred to the District Court of Dauphin County, at the instance of the defendants; that such proceedings were had in the District Court, that on the 21st day of May, 1824, the cause came on for trial, when a verdict was rendered for the defendants, upon which judgment was rendered; that the record was afterwards removed to the Supreme Court of Pennsylvania, by writ of error on part of the plaintiff, where the judgment of the District Court was reversed, and on the 27th of November, 1826, the record was remitted to the District Court; that on the 11th day of December, 1826, the said action of ejectment was removed by habeas corpus, on the part of the defendants, into the Circuit Court in and for the County of Dauphin; that on the 6th day of April, in the year 1829, the death of Thomas Duncan, Esq., one of the defendants, was suggested on the record,—the death of Thomas Duncan having taken place in March, 1829, and Stephen Duncan, Esq., one of the devisees of Thomas Duncan, was substituted in his place as a defendant and landlord of the premises; that such proceedings were had in the Circuit Court, that afterwards, on the 24th day of February, in the year 1831, the cause came on for trial before the Honorable John Ross, one of the Judges of the Supreme Court of Pennsylvania, holding a Court in and for the County of Dauphin, and a jury, in which trial, before the Circuit Court, Stephen Duncan, the defendant, by fraud, caused the Court to deliver an inequitable charge to the jury, and to instruct the jury to find a verdict against the plaintiff, in that action, against equity and good conscience, as will manifestly appear to this Court, when the charge and the record of that action shall be produced before this Court; that the jury found a verdict for the defendants in obedience to the charge of the Court, against equity, upon which verdict the said Stephen Duncan, by fraud, caused and procured the said Circuit Court to enter an inequitable judgment in favor of the defendants, on the 10th day of March, 1831, from which last judgment an appeal was taken to the Supreme Court of Pennsylvania, on the same 10th day of March, 1831, in which Supreme Court Stephen Duncan, the defendant, by fraud, procured the said judgment of the Circuit Court, to be affirmed against the plaintiff in error, Peter M'Elcar, on the first day of June, 1831, most inequitably.

168. That the Supreme Court delivered no written opinion in support of their judgment, but adopted the opinion, in writing, of the Circuit Court as the basis of their judgment, to which opinion of the Circuit Court this Court is respectfully referred, as evidence of the erroneous and inequitable opinion of the Supreme Court of Pennsylvania in a matter of general equity, by which the cause then before it was determined.

169. Your orator shows, that, whilst the said action of ejectment was pending and undetermined in the Court of Common Pleas of Dauphin County, in the District Court of the same county, in the Circuit Court, and in the Supreme Court of Pennsylvania, in which Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, and others, were defendants, and in which action of ejectment the land in controversy was the same Island No. 3, which is named and described in this bill of complaint, and which said Big Island, No. 3, or Baskins' Island, was claimed and demanded, as his property, by Peter M'Elcar, in the said action of ejectment, and was possessed, claimed, and defended by Thomas and Stephen Duncan as their right and property, and in and by which action of ejectment Peter M'Elcar claimed to recover the Big Island, No. 3, or Baskins' Island, under and by virtue of the same title that this complainant has, as above set forth in this his bill of complaint, to have been held by and vested in Peter M'Elcar, and under or by virtue of no other or any different title, it being the same title, and no other, under and by virtue of which your orator claims to recover the Big Island in this his bill of complaint.

170. And whilst the said action of ejectment, wherein Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, and others, were defendants, as aforesaid, was yet pending and undetermined in the several Courts of Dauphin County, the depositions of many witnesses were taken on the part of Peter M'Elcar, on due and timely notice to the defendants, Thomas Duncan and Stephen Duncan, who attended and cross-examined the witnesses, in obedience to the rules of the several Courts, in which the cause was pending at the times respectively when the depositions were taken; that the depositions, after being so taken and duly filed of record in the cause, to wit, the deposition of George Clark, dated the 12th day of April, 1824; the first deposition of Samuel Campbell, dated the 14th day of April, 1827; the second deposition of Samuel Campbell, dated the 25th day of December, 1829; the first deposition of Robert Armstrong, dated the 12th day of March, 1824; the second deposition of Robert Armstrong, dated January 2d, 1827; the deposition of Kesiah Martin, dated January 8th, 1830; the deposition of Rebecca Clark, dated January 8th, 1830; the deposition of John Ayres, dated ; the deposition of Barbara Herran, dated the 14th day of April, 1827; the deposition of Frederick Myres, dated January 8th, 1830, and the several depositions of William Baskins and John Diven, dated the 21st day of April, 1827.

171. Each and all of which aforesaid depositions, after being duly taken, as aforesaid, on the part of the plaintiff, Peter M'Elcar, on due notice to the defendants, and on cross-examination by the defendants, were duly filed of record in the Circuit Court of the County of Dauphin, and were read and received in evidence on the part of the plaintiff, at and in the trial of the cause, in the Circuit

Court, as aforesaid, and were afterwards removed with the record of the action of ejectment from the Circuit Court to the Supreme Court of Pennsylvania, by appeal from the judgment of the Circuit Court by the plaintiff.

172. And your orator states, that at, in, and upon the trial of the aforesaid action of ejectment in the Circuit Court of the County of Dauphin, as also in the Supreme Court of Pennsylvania, wherein Peter M'Elcar was plaintiff, and William Elliott, John Kouffer, Robert Boner, Thomas Duncan, and Stephen Duncan, were defendants, and in which the plaintiff claimed to recover the possession of Big Island, No. 3, the plaintiff claimed under and through the same title under and by virtue of which your orator claims and prays to recover the possession of the same island from Jacob M. Haldeman by this bill; and that the same title, under which your orator claims and prays to recover in this bill, was in issue between Peter M'Elcar, as plaintiff, and William Elliott, Thomas Duncan, Stephen Duncan, and others, in the Circuit Court of the County of Dauphin and in the Supreme Court of Pennsylvania, as aforesaid.

173. That on or about the first day of April, in the year 1834, Jacob M. Haldeman, Esq., one of the defendants in this bill of complaint, fraudulently, under and by color of a pretended purchase of Island No. 3, as a part of the estate of Thomas Duncan, Esq., deceased, at a public, judicial sale, called a sheriff's sale, by the Sheriff of the County of Dauphin, of the fraudulent and pretended title of Thomas Duncan, Esq., to and in the Big Island, No. 3, inequitably entered upon and took possession of the Big Island, No. 3, and of every part of it, without the consent and against the will of Peter M'Elcar, and has received the rents of the Island No. 3 from the first day of April, 1834, to the present time, and is yet in possession of said island inequitably.

174. That at the time of the aforesaid pretended purchase by Jacob M. Haldeman, at sheriff's sale, of the pretended title of Thomas Duncan to Island No. 3, and at the time he took possession of the island, he had full notice, actual and constructive, of the ancient, indefeasible, equitable title to and possession of Island No. 3, by Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, and Alexander Steen, in the years 1749 and 1755, and of the indefeasible, equitable title to and possession of Island No. 3, in the years 1799, 1800, and 1802, as held by William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, by and through the descents, devises, transfers, and conveyances, as set forth and stated in this bill.

175. That Jacob M. Haldeman, by his alleged and pretended purchase of Big Island, No. 3, at the pretended sale of the same by the Sheriff of the County of Dauphin, as aforesaid, acquired no other, or further, or higher, or better title to the said Island No. 3

than Thomas Duncan in his lifetime had and held to the said island; and that, at the time of his pretended purchase of Island No. 3, as aforesaid, in or about the year 1834, the said Jacob M. Haldeman well knew that the true and valid equitable title to Big Island, No. 3 was then vested in Peter M'Elcar, of which the said Jacob had notice, actual and constructive.

176. And your orator states, that the ancient, indefeasible, equitable title of Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, and Alexander Steen, of, to, and in Island No. 3, in the years 1749, 1750, and 1755, and of William Baskins, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, in the years 1799, 1800, 1801, and on the first day of June, 1802, as set forth in this bill, and of Peter M'Elcar on the first day of April, 1834, as set forth and stated in this bill, was adverse and hostile to the pretended title and fraudulent possession of Thomas Duncan and Stephen Duncan to and of the same island, and was older, better, paramount, and superior, to the pretended title of Thomas and Stephen Duncan to the Big Island, and in no way or manner connected with the pretended title or claim of Thomas Duncan or of Stephen Duncan to the said island, of all which, Jacob M. Haldeman had notice, actual and constructive, before and at the time of his pretended purchase, as aforesaid, of the pretended title and fraudulent claim of Thomas Duncan to the said Island No. 3, as set forth in this bill.

177. That Jacob M. Haldeman entered upon and took possession of the Big Island, No. 3, and yet holds the same under and by color of the fraudulent claim and pretended title of Thomas Duncan, or of Stephen Duncan, to the same island as above set forth in this bill, and yet holds the possession of Island No. 3 by the same inequitable claim and pretended title of Stephen or of Thomas Duncan to the same, and by no other, higher, better, or more equitable right or title than Thomas Duncan and Stephen Duncan had and held to the same island, with full notice, constructive and actual, of all the facts as above set forth in this bill relative to the equitable title to and right to the possession of the Big Island, No. 3, and that the same equitable title to the island was, in the year 1834, and for a long time before the said year, vested in Peter M'Elcar as the true and rightful owner of the said island in equitable fee-simple.

178. And your orator states, that on the 14th day of June, in the year 1839, the Supreme Court of Pennsylvania, for the Middle District, sitting at Harrisburg, made the following order, which stands of record in that Court, to wit:

"May Term, 1831.

"PETER M'ELCAR,
v.
WILLIAM ELLIOTT et al. } No. 43.

"Appeal from the Circuit Court of Dauphin County.

"And now, June 14, 1839, on motion of I. Fisher, Esq., the appellant is allowed to withdraw any papers and documents, filed by him in this cause under the inspection of the Prothonotary of this Court. Court order; Not the record, but the loose papers; Depositions, &c. June 14, 1839."

179. Your orator states, that, under the aforesaid order of the Supreme Court of Pennsylvania, Isaac Fisher, the attorney of Peter M'Elcar, the appellant, under the inspection of the Prothonotary of the Supreme Court of Pennsylvania, withdrew from the files of the records of that Court the depositions of George Clark, Robert Armstrong, Samuel Campbell, John Ayres, Frederick Myres, William Baskins, John Diven, Rebecca Clark, Kesiah, Martin, and Barbara Herran.

180. Your orator shows, that a duly certified copy of the record of the action of ejectment, wherein Peter M'Elcar was plaintiff, and William Elliott, Thomas Duncan, Stephen Duncan, and others, were defendants, in the Supreme Court of Pennsylvania, under the seal of that Court, and now in the custody of your orator, is ready to be produced as this Court shall direct, and which record your orator prays leave to exhibit in evidence at the trial of this cause, together with the opinion of the Circuit Court, adopted by the Supreme Court as evidence of the inequitable judgment of the Supreme Court of Pennsylvania in that case rendered against the plaintiff in the cause.

181. And your orator states, that on or about the first day of July, in the year 1839, Peter M'Elcar (he being at that time the sole equitable owner, in fee-simple, of the Big Island, No. 3, as set forth and charged in this bill) went upon the said island, in his proper person, it being the same island in controversy in this suit, and the possession of which is demanded in this bill of complaint, and made actual entry into, over, and upon the island, and every part of it, for the purpose and with the intention of taking actual seizin and possession of the Big Island, No. 3, and of every part it, for the purpose of barring, estopping, and preventing the statute of limitations of twenty-one years, from destroying and taking away the title of Peter M'Elcar to the Big Island, No. 3, and went to each and every house upon the island, and gave notice to the people living in each and all of the houses, that the island was the property of him, Peter M'Elcar, and that he had come to take possession of it, and that he did then take possession of the island; that the people living in the

houses and on the island should consider themselves the tenants of him, Peter M'Elcar, and should not pay any more rent to Mr. Haldeman; and the said Peter, then and there, went into the harvest field, where the tenants were cutting wheat and rye, and pulled up some of the wheat as evidence that he took possession of the island; that Peter M'Elcar made the entry upon the island in the summer of the year 1839, on or about the first of July, under the direction of his counsel, and for the purpose of barring and preventing the statute of limitations of 21 years from estopping and destroying the title of the said Peter M'Elcar to the island; that, at the time he made this entry on the island, on or about the first day of July, 1839, Henry Bowman was with him; the aforesaid entry was made in July, 1839.

182. And your orator shows, that on the first day of August, in the year 1839, Peter M'Elcar, by his deed of bargain and sale, under his hand and seal, for a good and valuable consideration, granted, bargained, and sold to Isaac M. Fisher, a citizen of the State of Delaware, residing in the said State of Delaware, his heirs, and assigns, all the right, title, and interest, property, claim, and demand of him, Peter M'Elcar, a citizen of the State of Pennsylvania, of, to, in, or upon the Big Island, No. 3, Baskins' or M'Elcar's Island, to have and to hold the said island, Baskins' Island, or Island No. 3, otherwise called M'Elcar's Island, to him, Isaac M. Fisher, his heirs, and assigns, forever, as fully, in law, equity, and fact, as Peter M'Elcar held and was entitled to the same island, lying in the River Susquehanna, at the mouth of the Juniata, in Dauphin County, Pennsylvania, on the last day of July, in the year 1839, with the appurtenances, which deed from Peter M'Elcar to Isaac M. Fisher, duly executed and acknowledged, and now in the custody of your orator, is ready to be produced as this Court shall direct, and which deed, your orator prays leave to give in evidence at the trial and hearing of this cause.

183. Your orator states, that, after the receipt, by your orator, of the deed, dated the first day of August, in the year 1839, from Peter M'Elcar to Isaac M. Fisher for all the interest, right, and title of Peter M'Elcar to or in the Big Island, No. 3, commonly called Baskins' Island, or M'Elcar's Island, your orator verily believed and was advised by his counsel, learned in the law and skilled in the rules of equity, that your orator had such a title to the Big Island as was sufficient to enable him to support and maintain an action of ejectment, for the recovery of the island, on the Common Law side of this Court; and that, as your orator had a legal title to the island, he could not sustain a bill in equity, in this Court, to enforce his right and title to the island, or to recover the possession thereof.

184. That, acting on the faith and in belief of such advice of his counsel, your orator caused an action of ejectment to be instituted

on the Common Law side of this Court, No. 11, of April Sessions, 1840, for the recovery of the Big Island, No. 3, the record of which action of ejectment stands upon the docket of the Circuit Court of the United States for the Eastern District of Pennsylvania, as follows:

No. 11,—Of April Sessions, 1840.

JOHN DOE, a citizen of the State of Delaware, Lessee of ISAAC M. FISHER, a citizen of the State of Delaware,

v.

RICHARD ROE, a citizen of the State of Pennsylvania, with notice to JOHN CORTER, DANIEL MILLER, ABRAHAM MILLER, ANTHONY ECKER, and SAMUEL CORMAN, JACOB M. HALDERMAN (landlord) admitted, Defendant.

185. That the real parties, interested in the aforesaid action of ejectment, were your orator, as plaintiff, and Jacob M. Halderman, Esq., as defendant; that, whilst the said action was pending in the Circuit Court of the United States, in which action your orator sought to recover the possession of the same Big Island, No. 3, which is described in this bill, and the possession of which your orator seeks to recover by this bill, both parties took depositions of various witnesses, which were duly taken in the cause and filed with the record of the case in the Circuit Court of the United States, and which were read in evidence on the trial of the cause, on the Common Law side of the Circuit Court, at October Sessions, 1843, before the Judges of this Court; that, whilst the said cause was depending on the Common Law side of this Court, your orator caused the depositions of Paul Steel, of John Holland, of James Smith, of John Kauffer, of Samuel Garman, and of Peter M'Elcar, to be duly taken in said cause, in accordance with the rules and orders of the Common Law side of this Court, which depositions, so duly taken of Paul Steel, John Holland, James Smith, John Kauffer, Samuel Garman, and Peter M'Elcar, were duly filed amongst the records of the Common Law side of this Court, and were severally and respectively read in evidence, on the part of the plaintiff, in the action of ejectment No. 11, of April Sessions, 1840, on the Common Law side of this Court at October Sessions, 1843; in which action of ejectment, No. 11, of April Sessions, 1840, on the Common Law side of this Court, the plaintiff sought to recover and claimed the possession of the Big Island, No. 3, and the defendant, Jacob Halderman, claimed to hold the possession of Big Island, No. 3, being the same island which your orator seeks to recover by this bill; that, in the action of ejectment, No. 11, of April Sessions, 1840, in the Circuit Court of the United States, as above set forth, the plaintiff claimed the right to recover the Big Island, No. 3, under, through, and by virtue

of the same title, and of no other title, which your orator now claims to be vested in himself, and under, through and by virtue of which, he claims and prays to recover the possession of the Big Island, No. 3 in this his bill of complaint, as set forth in his bill.

186. And your orator prays, that the aforesaid depositions of Paul Steel, John Holland, James Smith, John Kauffer, Samuel Garman, and Peter M'Elcar, so taken and filed of record on the part of the plaintiff in action No. 11, of April Sessions, 1840, and read in evidence at the trial and hearing of said cause, may be received and read in evidence on the part of your orator on the hearing of this bill of complaint.

187. Your orator states, that, at the trial and hearing of the action No. 11, of April Sessions, 1840, on the Common Law side of this Court, certain depositions, which had been duly taken in the State Courts of Pennsylvania, in and for the County of Dauphin, and filed of record in the Supreme Court of Pennsylvania, in an action of ejectment there pending, in which Peter M'Elcar was plaintiff, and Thomas Duncan, William Elliott, and others, were defendants, and which depositions had been withdrawn from the files of the Supreme Court of Pennsylvania, by leave of that Court, as above set forth in this bill of complaint, were severally received and read in evidence, on the part of the plaintiff, in the aforesaid action No. 11, of April Sessions, 1840, on the Common Law side of this Court, by the order and permission of the Court; that, in the action of ejectment aforesaid, in the Supreme Court of Pennsylvania, in which Peter M'Elcar was plaintiff, and in which Thomas Duncan and others were defendants, and in which action the last-named depositions were taken, the plaintiff, Peter M'Elcar, sought to recover the Big Island, No. 3, by the same title (and by no other title) by which, your orator prays to recover the same island in this bill of complaint; and that, in the action No. 11, of April Sessions, 1840, on the Common Law side of this Court, the plaintiff claimed and sought to recover the possession of Big Island, No. 3, under, through, and by virtue of the same title, and no other title than that under and by virtue of which, your orator prays to recover the same island by this bill; and that, at the trial of the action No. 11, of April Sessions, 1840, on the Common Law side of this Court, Jacob M. Halderman, the defendant, claimed to hold the possession of the same Island No. 3, under and by virtue of a right and title derived from or through Thomas Duncan, Esq.; and that the same title under and by virtue of which, your orator prays to recover the Island No. 3, in this bill, was in issue in the aforesaid action No. 11, of April Sessions, 1840.

188. Your orator states, that the depositions, so withdrawn from the files of the Supreme Court of Pennsylvania, to wit, the deposition of George Clark, dated the 12th day of March, 1824; the first deposition of Samuel Campbell, dated the 14th day of April, 1827; the second deposition of Samuel Campbell, dated the 25th day of

December, 1829; the first deposition of Robert Armstrong, dated the 12th day of March, 1824; the second deposition of Robert Armstrong, dated January 2d, 1827; the deposition of Keziah Martin, dated January 8th, 1830; the deposition of Rebecca Clark, dated January 8th, 1830; the deposition of John Ayres; the deposition of Barbara Herran, dated the 14th day of April, 1827; the deposition of Frederick Myres, dated January 8th, 1830, and the several depositions of William Baskins and John Diven, dated the 21st day of April, 1827,—were taken, and filed in the Supreme Court of Pennsylvania, as aforesaid, in the action wherein Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, William Elliott, and others, were defendants; being an action of ejectment, that the land claimed by the plaintiff, in that action of ejectment, was the same Big Island, No. 3 claimed by your orator in this his bill of complaint; that Stephen Duncan and Thomas Duncan were then in possession of the Island; and that Jacob M. Haldeman came into possession of the Big Island, No. 3, under and by color of the false and inequitable possession and pretended title of Thomas and Stephen Duncan, or of one of them.

189. Your orator states, that the depositions of George Clark, Samuel Campbell, Robert Armstrong, Kesiah Martin, Rebecca Clark, John Ayres, Barbara Herran, Frederick Myres, of William Baskins, and of John Diven, so withdrawn from the files of the Supreme Court of Pennsylvania, were each and severally read and given in evidence, on the part of the plaintiff, in and upon the trial of the action of ejectment No. 11, of April Sessions, 1840, on the Common Law side of this Court, at October Sessions, in the year 1843, by the order and permission of this Court; and that your orator now has in his custody, the same last-named depositions so read in evidence by him on the Common Law side of this Court, and which he prays leave to be permitted to read in evidence on the hearing of this bill, as this Court shall order and direct.

190. Which action of ejectment, No. 11, of April Sessions, 1840, in the Circuit Court of the United States for the Eastern District of Pennsylvania, continued pending and undetermined until the month of November, 1843; in which action of ejectment, the parties, plaintiff and defendant, were, substantially and in interest the same as the parties to this bill of complaint; that the island and premises, claimed and demanded by the plaintiff in that action of ejectment was the same island, named and described in this bill of complaint, as "the Big Island, No. 3," and the possession of which he seeks to recover by this bill, and that the title under which the plaintiff claimed to recover in the action of ejectment No. 11, of April Sessions, 1840, and which he gave in evidence in that action, was and is the same title on which your orator's bill is founded in this present action, and under which he seeks a decree in this case, it being the same title, and no other, which was conveyed to your orator by Peter M'Elcar, by the deed of August 1st, 1839.

191. Your orator states, that, after hearing all the evidence on the part of both, the plaintiff and defendant, in the action of ejectment No. 11, of April Sessions, 1840, the Circuit Court was of opinion, that the plaintiff had not shown a perfect legal title in his lessor; whereupon Jacob M. Haldeman, the defendant, by his counsel, prayed the Court to instruct the jury, that they could not give a verdict for the plaintiff, because he had not shown the legal title of Island No. 3 to be in the plaintiff or his lessor; whereupon the Court so instructed the jury; whereupon the plaintiff, by his counsel, became nonsuit in said action of ejectment.

192. Your orator states, that Jacob M. Haldeman, Esq., unjustly and against equity, under and by color of the fraudulent and pretended claim of Thomas Duncan and Stephen Duncan to the Big Island, No. 3, entered into, upon, and over the Island, No. 3, on or about the first day of April, in the year 1834, and took possession of the same, and of every part of it, against the will and without the consent of Peter M'Elcar, and has, from the first day of April, 1834, until the present time, inequitably received the rents of the Big Island, No. 3, amounting to the sum of $1800 in each and every year, and has cut down and carried away from the island ten thousand cords of hickory and oak wood, together with a large amount of locust, pine, and other timber, all of the value of thirty thousand dollars, to the great injury and oppression of your orator, most inequitably, and is yet in possession of Island No. 3 inequitably.

194. Your orator states, that, in the action of ejectment commenced by Peter M'Elcar, in the Court of Common Pleas, in the County of Dauphin, in the State of Pennsylvania, in the month of December, in the year 1822, for the recovery of the possession of the Big Island, No. 3, in which action Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, William Elliott, and others, were defendants, Thomas Duncan, and afterwards Stephen Duncan, fraudulently and inequitably, for a long time, to wit, from the tenth day of December, in the year 1822, continually, until the first day of April, in the year 1834, prevented and hindered Peter M'Elcar from obtaining and procuring the quiet possession and peaceful enjoyment of the Big Island, No. 3, and every part of the same, by covinously removing that action of ejectment from and out of the Court of Common Pleas into the District Court in and for the County of Dauphin, and afterwards, by removing the said action from and out of the District Court into the Circuit Court in and for the County of Dauphin.

195. That, during all the time from the tenth day of December, 1822, continually until the first of June, in the year 1831, Thomas Duncan and Stephen Duncan inequitably set up and alleged right and title to the Big Island, No. 3, in and before said Courts, to wit, the Court of Common Pleas of the County of Dauphin, the District Court of the County of Dauphin, the Circuit Court of the County of Dauphin, and before and in the Supreme Court of Pennsylvania,

and during all that time alleged and pretended, that they, Thomas and Stephen Duncan, or one of them, had a good, valid, legal, and equitable right and title to hold and possess the Big Island, No. 3, and, by inequitable testimony and acts, hindered and prevented Peter M'Elcar from peaceable taking and quietly holding the possession of the Big Island, No. 3, to the great injury and oppression of Peter M'Elcar, inequitably.

196. He states, that there is no distinct and separate Court of Equity in the State of Pennsylvania; that the only civil form of judicial proceeding in use, in Pennsylvania, for the recovery of the possession of lands and tenements wrongfully withheld from the owner, is the action of ejectment; that in the action of ejectment above referred to in this bill of complaint, in which Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, Wm. Elliott, and others, were defendants, and in which the plaintiff claimed to recover the Big Island, No. 3, it was decided and adjudged by the Supreme Court of Pennsylvania, the Court of the last resort and of unlimited jurisdiction, and whose judgments are final as a court of error and appeal under the State judiciary, that fraud, perpetrated by menaces, threats, and falsehoods, was not the subject of redress in that Court, nor in the inferior Courts of the State, in either law or equity; and that one, holding an equitable fee-simple title to lands and tenements, of which he was in possession, under and by virtue of his equitable title, being dispossessed by the fraud and menaces of him holding the legal title in trust for the equitable owner of the estate, was not entitled to relief against the legal trustee, nor to be restored to the possession of the estate; and that, in such case, although the holder of the legal title after he had ousted the equitable owner and taken possession of the estate, had held it until he had received, of the rents and profits of the estate, a sum more than equal to all money, with its interest due by the holder of the equitable title to the holder of the legal title of the estate, yet the equitable owner was not entitled to recover the possession; and that, before he could recover the possession, he must tender to the holder of the legal title all money with its interest due by the equitable owner of the land to the holder of the legal title, respective of and without regard to the rents and profits of the land taken and received by the holder of the legal estate whilst in possession of the land.

197. And that, in a case where the proprietors of Pennsylvania, the heirs and legal representatives of William Penn, Esq., had sold and granted a portion of the vacant unappropriated land of the Province to an actual settler on the common terms, and at the price of £15 10*s.* per hundred acres, and the grantee and settler entered upon the land, built houses, cleared land, cultivated it, and resided upon it, and the proprietors, the Penns, sold their legal estate in the land, so held by the actual settler, to a third person, and the pur-

chaser of the legal estate dispossessed the actual settler by fraud and menaces, and took possession of the land, and received the rents and profits and held it until the amount of the rents and profits of the land, so received by the holder of the legal estate, exceeded the amount of the original purchase-money, at $41 33¼ per hundred acres, with legal interest on the same from the date of the orginal settlement upon the land, yet, before the actual settler could recover his land from the fraudulent holder of the legal estate, he must tender to such holder of the legal estate the full amount of the original purchase-money with its interest, and also the full amount of all money with its interest in any way expended or advanced on account of the estate by the holder of the legal title, whether in improving the estate or otherwise.

198. Which opinion of the Supreme Court of Pennsylvania was inequitable, and for this your orator refers to the opinion of the Honorable John Ross, one of the Judges of the Supreme Court of Pennsylvania, who tried the action of ejectment in the Circuit Court of Dauphin County, wherein Peter M'Elcar was plaintiff, and Thomas Duncan, Stephen Duncan, William Elliott, and others, were defendants, in which action the Big Island, No. 3, was the premises in controversy, and in which the written opinion of Judge Ross, before whom the cause was tried in the Circuit Court, was unanimously affirmed in the Supreme Court of Pennsylvania.

199. Your orator further states, that, in the institution and prosecution of the aforesaid action of ejectment in the several Courts of Dauphin County and in the Supreme Court of Pennsylvania, by Peter M'Elcar against Thomas Duncan and Stephen Duncan for the recovery of the Big Island, No. 3, the plaintiff, Peter M'Elcar, in the course of the nine years, during which the action was pending in Court, necessarily incurred and was subject to great and oppressive costs and expenses in collecting and preparing testimony, in personally attending the Courts, and otherwise conducting the said action of ejectment.

200. Whereby Peter M'Elcar was reduced to great poverty, and was, in consequence of such poverty and destitution, unable to commence and prosecute a new action against Stephen Duncan, Esq., or Jacob M. Haldeman, Esq., for the recovery of the Big Island, at all times from the first day of June, in the year 1831, until the first day of August, in the year 1839; and that Peter M'Elcar was so rendered poor and unable to prosecute his claim and title to the Big Island by the fraud and deceit of Thomas Duncan and of Stephen Duncan, Esquires.

201. And your orator states, that the aforesaid Courts of Common Pleas of the County of Dauphin, in the State of Pennsylvania, the District Court and Circuit Court of the same county, and the Supreme Court of Pennsylvania, possessed full and exclusive jurisdiction, under the laws of Pennsylvania, of the said action of ejectment,

and of all other actions and proceedings at law or in equity relative to the title or possession of the Big Island, No. 3, between citizens of the State of Pennsylvania; and that Peter M'Elcar, Thomas Duncan, and Stephen Duncan, were all, and severally citizens of the State of Pennsylvania, from the first day of December, 1822, until the death of Thomas Duncan, in the year 1829; and that Stephen Duncan continued to be a citizen of Pennsylvania, until the first day of April, 1834; and that Peter M'Elcar so continued to be and remain a citizen of the State of Pennsylvania, until the time of his death in 1844; and that Jacob M. Haldeman has been a citizen of Pennsylvania from the first day of April, 1830, to the present time.

202. Your orator states, that, during all the time from the first day of December, 1822, until the first day of August, 1839, Peter M'Elcar was inequitably hindered and prevented from taking and holding the peaceable and exclusive possession of the Big Island, No. 3, and was also hindered and entirely prevented from prosecuting his rightful and equitable claim and title to the said island in any and every court of equity or of law by reason of the aforesaid inequitable judgment and decree of the Circuit Court of the County of Dauphin, so made on the 10th day of March, 1831, and of the judgment and decree of the Supreme Court of Pennsylvania, so made on the first day of June, 1831, caused and procured by Stephen Duncan, as will manifestly appear by that judgment and the opinion of the Court, wherein the same was given, when the judgment and the opinion of the Court shall be produced before this Court, which your orator asks leave to read in evidence as proof that the same are inequitable.

203. Your orator shows, that the said inequitable judgment of the Circuit Court, affirmed by the Supreme Court of Pennsylvania, and of which judgment Jacob M. Haldeman has inequitably availed himself, and, by color and pretence of which he has inequitably hindered and prevented your orator from taking the peaceable possession of the Big Island, No. 3, at all times from and since the first day of August, 1839, was inequitably set up and used by Jacob M. Haldeman, Esq., on the first day of August, 1839, to prevent and hinder Peter M'Elcar from taking possession of the Island No. 3, and holding the same; and that, by means and reason of the same judgment, Jacob M. Haldeman did on the 1st day of August, 1839, prevent and hinder, most inequitably, Peter M'Elcar from taking and delivering the possession of Island No. 3, and of every part of it, to your orator, in pursuance of and in accordance with the deed of bargain and sale as above set forth in this bill by and from Peter M'Elcar to your orator; and that Jacob M. Haldeman, farther, availed himself of the aforesaid inequitable judgment of the Supreme Court of Pennsylvania against your orator, by giving the same in evidence in this Court against your orator in the action of ejectment, No. 11, of April Sessions, 1840, on the Common Law side of this Court, at October Sessions, 1843.

204. Your orator states, that the possession of the Big Island, No. 3, was, as above set forth in this bill of complaint, fraudulently taken and procured by Thomas Duncan, Esq., of and from William Baskin, John Diven, George Clark, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, the equitable owners and possessors of the island on or about the first day of June, in the year 1802, by the affirmations and fraudulent acts of Thomas Duncan, and by and through the ignorance and fear of the equitable owners and possessors of the Big Island, No. 3, and by and through the known confidence and misplaced reliance of the owners and possessors of the Island No. 3 in and upon the word and character of Thomas Duncan, as an eminent lawyer, possessing superior knowledge of both the law and the facts governing and constituting titles to lands in Pennsylvania, and especially of settlement and improvement rights, and titles under them, as above set forth, at large, in this bill of complaint.

205. That, by reason of the false and deceitful representations of Thomas Duncan, so inequitably asserted and made to William Baskins, John Diven, George Clark, and to Peter, Daniel, Martin, Jacob, and Thomas M'Elcar, they remained and continued ignorant of and wholly unacquainted with their equitable right and title to the Big Island, No. 3, and of the just state of the facts on which their title was founded, during all the time from the first day of June, in the year 1802, continually, until the first day of February, in the year 1822; and that, during all the time from the first day of February, in the year 1822, until the first day of April, in the year 1829, Thomas Duncan, Esq., most inequitably received the rents and profits of Island No. 3, and hindered and prevented Peter M'Elcar from peaceably taking and equitably holding possession of said island, by reason that Thomas Duncan inequitably set up and pretended that he had a good and sufficient legal and equitable right and title to the Island No. 3; and set up and pretended most inequitably, that he had a good, sufficient, legal, and equitable defence against the action of ejectment brought, as aforesaid, by Peter M'Elcar for the recovery of Island No. 3 from him, Thomas Duncan, William Elliott, and others; that, during all the time from the first day of February, 1822, until the first day of April, 1829, Thomas Duncan inequitably protracted and delayed the defence of the defendants in the action of ejectment of Peter M'Elcar against Thomas Duncan and others, as above set forth in this bill, and by fraudulent pretences of right and title to the Island No. 3, made, averred, and insisted upon in the Court of Common Pleas of Dauphin County, in the District Court of the same county, and in the Supreme Court of Pennsylvania, during all that time hindered and prevented Peter M'Elcar from taking peaceable possession of said island and holding the same in quietness.

206. And that Stephen Duncan inequitably procured and obtained

the possession of Island No. 3 on or about the first day of April, in the year 1829, as above set forth, and inequitably held the possession, until on or about the first day of April, 1834, and during all that time fraudulently set up and alleged, that he had a good and sufficient legal and equitable title to and in Island No. 3, and set up and pretended a colorable and inequitable defence and claim of title to the island, as defendant in the action of ejectment brought, as set forth in this bill, for the recovery of the island by Peter M'Elcar against Thomas Duncan, William Elliott, Stephen Duncan, and others, in the County of Dauphin; and that Stephen Duncan, by false pretences and fraud, caused and procured the inequitable verdict of the jury in the same action, and the inequitable judgment of the Circuit Court, on the 10th day of March, 1831, and also the inequitable judgment of the Supreme Court, in the same action, on the first day of June, 1831, as set forth in this bill; and that Stephen Duncan continually, from the first day of June, 1831, to the first day of April, 1834, set up, alleged, and pretended, that the judgment, so rendered by the Supreme Court of Pennsylvania on the first day of June, 1831, was final and conclusive in law and equity between the parties, and so prevented and hindered Peter M'Elcar from taking possession of said island, all of which was most inequitable.

207. And your orator states, that on or about the first day of April, in the year 1834, Stephen Duncan withdrew from and abandoned the possession of the Big Island, No. 3, M'Elcar's or Baskin's Island, and since that time has removed from the State of Pennsylvania, departed to places unknown to your orator, beyond the limits of the jurisdiction of this Court, and out of the reach of its process, of all which he prays the Court to receive evidence at the hearing of this bill; and he further states, that Stephen Duncan has not been in possession of Big Island, No. 3, since the first day of April, in the year 1834, nor of any part of it, and has no interest in or title to the Big Island, No. 3.

207. And your orator states, that, at the trial of the action of ejectment, as aforesaid, in the Circuit Court of the United States, No. 11, of April Sessions, 1840, at October Sessions, 1843, the title of the complainant in this bill being then in issue between your orator and Jacob M. Haldeman, Esq., and Island No. 3 being the premises in controversy in that action, and the title of the plaintiff being the same there as the title of your orator is here, Jacob M. Haldeman, Esq., the defendant in that action as well as in this bill, set up as his only defence against the title of the plaintiff in that action of ejectment, and gave in evidence before the Court and jury, a certain deed, called a Sheriff's deed, from John Fox, Sheriff of the County of Dauphin, in the State of Pennsylvania, to Jacob M. Haldeman, Esq., for all the right, title, and interest of Thomas Duncan, Esq., of, to, and in the Big Island, No. 3, which deed con-

veyed only the title of Thomas Duncan, Esq., in the Big Island to Jacob M. Haldeman, and no other or better title than Thomas Duncan in his lifetime had to the Island No. 3; and that, at and on the trial of the said ejectment No. 11, of April Sessions, 1840, in the Circuit Court of the United States, Jacob M. Haldeman claimed a right to hold the possession of Island No. 3 under the aforesaid deed from John Fox, and under and by force of the title of Thomas Duncan to Island No. 3, so conveyed by John Fox, to Jacob M. Haldeman by the deed, called Sheriff's deed, last aforesaid; and your orator states, that the deed, last aforesaid, was and is inequitable, and gave no title or valid right to Island No. 3 to Jacob M. Haldeman, Esq.

208. That, on the trial of the action of ejectment, No. 11, of April Sessions, in the Circuit Court of the United States, last aforesaid, Jacob M. Haldeman further claimed to hold the possession of Island No. 3, under and by virtue of a title derived from and through Thomas Duncan, and the deed, called sheriff's deed, last aforesaid; and in support of his claim and pretended title to Island No. 3, gave in evidence the fraudulent deed above referred to in this bill, bearing date the 19th day of December, in the year 1799, and purporting to be from John Penn and Richard Penn, by their attorney, Edmund Physic, to Thomas Duncan, for a part of the Big Island, No. 3; and Jacob M. Haldeman also gave in evidence, at the trial of the same action, No. 11, April Sessions, 1840, the deed above referred to in this bill, bearing date the 12th day of July, 1803, purporting to be a deed from John Penn and Richard Penn, by their attorney, John R. Coats, to Thomas Duncan for the lower part of the Big Island, No. 3, which last-mentioned deeds, dated the 19th day of December, 1799, and the 12th day of July, 1803, are fraudulent.

209. Your orator states, that, at the trial of the aforesaid action of ejectment No. 11, of April Sessions, 1840, in the Circuit Court, Jacob M. Haldeman, Esq., gave in evidence the depositions of Robert Clark, John R. Coats, and of Edmund Physic, and caused the same depositions to be filed of record on the common law side of this Court, which last depositions your orator prays leave to read in evidence at the hearing of this bill, and to that end that the same may be considered a part of the evidence in this cause.

210. And your orator states, that the aforesaid deed, purporting to be a deed from Richard and John Penn, by their attorney, Edmund Physic, to Thomas Duncan, dated the 19th day of December, 1799; and the aforesaid deed, purporting to be a deed from Richard Penn and John Penn, by their attorney, John R. Coats, to Thomas Duncan, dated the 12th day of July, in the year 1803; and the aforesaid deposition of Robert Clark, are notice to and admissions by Jacob M. Haldeman, defendant, that, in the years 1799 and 1800, William Baskins, John Diven, George Clark, Thomas M'Elcar,

Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, were in the full and exclusive possession of the Big Island, No. 3, and of every part of it, holding the same in equitable fee-simple, as is above set forth in this bill of complaint; and that the same title is yet in existence, and is now vested in your orator, as set forth in this bill.

211. And your orator states, that, continually during all the time from the first day of February, in the year 1822, until the first day of August, in the year 1839, Peter M'Elcar prosecuted his rightful and equitable title and claim to the Big Island, No. 3, described in this bill, with all due vigilance, and with his utmost ability, but was, during all that period, prevented and hindered from so obtaining the peaceable and exclusive possession of the island by the fraud and violence of Thomas Duncan, Stephen Duncan, and Jacob M. Haldeman, Esq., as set forth in this bill of complaint.

212. And your orator states, that, during all the time since the first day of August, 1839, continually, your orator has labored diligently to procure the peaceable and exclusive possession of the same Big Island, No. 3, but has been, at all times, prevented and hindered by the fraud of Jacob M. Haldeman, Esq., from so procuring and taking the possession of the Big Island, No. 3, most inequitably.

212. From all which your orator had well hoped, that Jacob M. Haldeman would peaceably surrender up and deliver to your orator the possession of the Big Island, No. 3, and of every part of the same, and account for and pay over to your orator the reasonable and full rents of the Island No. 3, from the first day of April, in the year 1834, with interest, as the same have been taken and received by Jacob M. Haldeman, Esq., amounting to the sum of thirty thousand dollars; yet so it is, that Jacob M. Haldeman has altogether refused to deliver to your orator the possession of the Big Island, No. 3, and has wholly refused to account for and pay over to your orator the full value and amount of the rents and issues of the said island, so as aforesaid received by the said Jacob M. Haldeman, amounting to thirty thousand dollars, or any part of the same.

214. And your orator states, that he had well hoped that Thomas Duncan, Esq., in his lifetime, had accounted for and paid over to Peter M'Elcar the whole amount of the rents of Island No. 3, with interest on the same, so as above received by said Thomas Duncan, Esq., in his lifetime, as charged in this bill, amounting, at the time of the death of the said Thomas Duncan, Esq., to the sum of thirty thousand dollars ($30,000), only deducting therefrom the amount of the purchase-money of Island No. 3, originally due to the proprietor at the rate of forty-one dollars and thirty-three cents, and one-third of a cent ($41 33⅓) for each and every hundred acres of the island, with interest thereon from the 1st day of September, in the year 1749; but now so it is, that said Thomas Duncan, Esq., in his lifetime, wholly refused to render any account of the rents and issues of

Island, No. 3, to Peter M'Elcar, in his lifetime, or to pay over any part of the rents, proceeds, and profits of said island to Peter M'Elcar.

215. And your orator had well hoped, that Thomas Chambers, Esq., administrator de bonis non with the will annexed of Thomas Duncan, Esq., deceased, would render a reasonable and just account of the proceeds of the rents and issues of the Big Island, No. 3, so received by Thomas Duncan, Esq., in his lifetime, between the first day of June, in the year 1802, and the first day of April, in the year 1829, amounting in the whole, with the interest thereon, at the present time, to the sum of fifty thousand dollars ($50,000), and, after deducting from the said sum of fifty thousand dollars the amount of the purchase-money originally due to the proprietors, the Penns, for the Big Island, No. 3, with interest thereon from the first day of September, 1749, would pay over the residue or remainder of the said sum of fifty thousand dollars to your orator, without let, hindrance, or delay.

216. Yet now so it is, that the said Thomas Chambers, Esq., administrator de bonis non with the will annexed of Thomas Duncan, Esq., deceased, hath altogether refused to account with your orator for the rents and issues of the Big Island, No. 3, so as aforesaid received by the said Thomas Duncan, in his lifetime, and hath wholly refused to pay over to your orator any part of the rents, proceeds, and issues of said island to your orator.

217. But so it is, that the said Jacob M. Haldeman, Esq., and Thomas Chambers, Esq., administrator de bonis non with the will annexed of Thomas Duncan, Esq., deceased, allege and pretend that no grant and permission were ever made and given by the proprietors of Pennsylvania, in the year 1749, or at any other time, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, to settle upon, hold, and occupy the Big Island, No. 3, in equitable fee-simple, as set forth in this bill; and pretend, that the said Thornton, Paxton, Clark, and Baskins, never did settle upon or become entitled to the said Big Island in equitable fee-simple as set forth in this bill of complaint; and that no such conveyances, devises, descents, and transfers by, from, and under the said Thornton, Paxton, Clark, and Baskins, as are set forth in this bill, ever took place, happened, or were made, whereby the equitable fee-simple of the said Island No. 3 was vested in William Baskins, John Diven, George Clark, Thomas, Jacob, Daniel, Martin, and Peter M'Elcar, on the first day of June, in the year one thousand eight hundred and two, as set forth in this bill, under and by virtue of which they were in peaceable possession of Big Island, No. 3, on the first day of June, 1802, as set forth in this bill; and that the sole and exclusive right and title in equitable fee-simple to and of the Big Island, No. 3, was never vested in Peter M'Elcar, as set forth in this bill; and that the good and valid equitable title, in fee-simple, of Peter M'Elcar to, in,

and of the Island No. 3 was never vested in your orator,—all of which is false, and manifestly against equity.

218. In consideration whereof, and forasmuch as your orator cannot be relieved in the premises, but by the aid and assistance of a court of equity, where matters of this nature are properly cognizable and relievable.

219. To the end, therefore, that the said Jacob M. Haldeman, and Thomas Chambers, Esq., administrator with the will annexed of Thomas Duncan, Esq., deceased, and the rest of the confederates when discovered, may make full, true, perfect, separate, distinct, and unreserved answers, upon their corporal oaths, to all and singular the several and respective matters, charges, statements, and allegations, as above set forth and presented in this bill of complaint; and especially and particularly, that Jacob M. Haldeman, Esq., may make full, perfect, due, separate, and distinct answers, upon his corporal oath, severally to all the matters contained, set forth, averred, and stated in this bill, as above presented, not only according to his positive knowledge of the facts stated, but also according to his remembrance, to the information he has received, and to the belief he is enabled to form on the subject.

220. To the end, therefore, that Thomas Chambers, Esq., administrator de bonis non cum testemento annexo of the Honorable Thomas Duncan, may answer fully, to the best of his knowledge, information, and belief, as to the full amount of the rents and issues of the Big Island, No. 3, so, as aforesaid, received by Thomas Duncan, Esq., in his lifetime, together with the dates and times when the same were received, and also the time when Thomas Duncan first obtained and procured the possession of Island No. 3, as set forth in this bill, as also the length of time during which he held possession of the Island No. 3; and that Jacob M. Haldeman, Esq., may answer:

221. 1st. Whether he is in possession of the Big Island, No. 3, at the mouth of the Juniata, or claims title to the said island, and, if he is in possession of it, when he first obtained the possession of said island?

222. 2d. Whether he does not claim to hold the said island under a title derived from Thomas Duncan, Esq., under a public judicial sale under execution by John Fox, Esq., Sheriff of the County of Dauphin; and whether he does not claim title to said island under two deeds from John Penn and Richard Penn to Thomas Duncan for the same island, one thereof dated on the 19th day of December, 1799, and the other thereof dated the 12th day of July, 1803, as stated in this bill?

223. 3d. Whether he knows, that in the year 1750 the Big Island, No. 3, had been in any way appropriated or set apart by the proprietors of Pennsylvania, their servants or agents, to and for the separate use and benefit of the Penns, or the proprietors, or the pro-

prietary government, as a portion of their private estates, of their separate estates, or of their tenths and manors, or in any other way for the use of the Penns, or the proprietary government? If he has such knowledge, let him set forth the evidence on which it is founded.

224. 4th. Whether he knows, that, before the year 1750, or before the year 1760, any warrant, special or general, any order of survey, any letter of instruction, or any written memorial, was ever issued from the proprietary land office, or by order of the proprietary government of Pennsylvania, for the survey or appropriation of the islands in the Susquehanna generally, or of Big Island, No. 3, in particular, for the separate and exclusive use of the Penn family, or of any member of it, or of the proprietors of Pennsylvania, or of the proprietary government, as a part of the private estates of the proprietors, or as a part of their separate estates, or as a part of their tenths or manors? And if any such warrant, order, letter, or memorial, was ever issued before the year 1750, or before the year 1760, let the said Jacob M. Haldeman state, in his answer, the date of the same, with the substance of its contents, and where the same is now to be found.

225. 5th. Whether he knows, that, before the year 1750, or before the year 1755, or before the year 1760, there was any warrant, general or special, order, survey, letter of instruction, or memorial in writing of any kind, remaining in the Land Office of Pennsylvania, or elsewhere, which gave or could give notice, either actual or constructive, to Joseph Thornton, or to Michael Paxton, or to George Clark, or to Francis Baskins, or to Alexander Steen, that the islands in the Susquehanna River had been appropriated to the exclusive use of the proprietors, or that the Big Island, No. 3, was not open and liable to be appropriated to the private use of said Thornton, Paxton, Clark, Baskins, and Steen, as individuals, by settlement and improvement, in the years 1749, 1750, and 1755? If any such warrant, order, survey, letter, or memorial, existed in the year 1750 and 1755, let the defendant state and set forth the date of the same, the substance of the contents, the place where the same was to be found in the years 1750 and 1755, and where the same is now to be found; or if the same is lost, what is the evidence on which the defendant relies, to prove that any such notice, warrant, order, survey, letter, or memorial, existed in the years 1749, 1750, or 1755.

226. 6th. Whether he knows of any evidence that proves, that, from the year 1749, when Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, first settled on the Big Island, No. 3, as stated in this bill, down until the year 1799, the proprietors of Pennsylvania, their servants or agents, ever gave any notice to the owners, occupiers, and possessors of the Big Island, No. 3, that the said island belonged to the Penns, or that they had any claim to the same; and whether the claim made by John R. Coats and Robert

Duncan on the 12th day of July, 1799, as set forth in this bill, was not the first and earliest claim ever made, in the name of the Penns, to this island as their separate or exclusive property?

227. 7th. Whether he knows the date of the first order of instruction or warrant that was ever issued from the Land Office of Pennsylvania by the proprietary government, or by order of the Penns, or of the Penn family, for the survey of the islands in the Susquehanna River generally, or of the Big Island, No. 3, in particular, was it dated on or before the 13th day of October, 1760? and whether he knows, or has seen, or can produce any warrant, general or special, any order, letter of instruction, or memorial, of a date anterior to the 13th day of October, 1760, whereby the proprietors, or their servants or agents, ever gave notice to the public of their intention to appropriate the Big Island, No. 3, to the exclusive use of the proprietors, or gave notice to the public that the same Island No. 3 was withdrawn from the mass of vacant lands of the Province, and appropriated to the exclusive use of the proprietors, or that the same island could not be appropriated to the use of individuals by actual settlement and improvement, on the common terms and at the common price? If he knows of any such notice, let him give its date and the place where it is now to be found.

228. 8th. If he knows or can prove, what the price was at which the proprietors held their islands in the River Susquehanna, in the years 1749, 1750, and 1755, within the Indian purchase of August 22, 1749, or within any previous purchase, let him state what that price was, and refer to the evidence which proves the price of the islands in the years aforesaid? together with the document containing such evidence, and the place where such document may be found?

229. 9th. That the defendant may set forth, if he knows that any islands in the Susquehanna River, within the Indian purchase of August 22, 1749, or within any previous purchase, were sold by the proprietors, before the year 1750 or 1755, by special contract, for prices higher than those at which the land on the river shores was sold at the same time; and, if he knows of any such sales, let him state where and in what document the evidence thereof is to be found.

230. 10th. Whether he does not know, &c., from actual observation, that the Big Island, No. 3, is in one of the most conspicuous and public places in Pennsylvania? Whether all persons who ascend or descend the Susquehanna and Juniata Rivers, in passing by or near the mouth of the Juniata, do not pass within full view of Island No. 3; and whether this has not constantly been the case from the year 1749 to the present time according to the history and tradition of the country? Whether several public highways do not lead within view of this island; and whether this has not constantly been the case since the year 1749, or at least since the first highroads were opened in the neighborhood of the island, or

since the earliest recollection of the defendant; and whether this is not the largest island in the River Susquehanna? Whether the Island No. 3, does not lie in the Susquehanna at the point where the Juniata flows into it; and whether all persons who ascend or descend the Susquehanna River, by the waters of the stream, do not pass along the shores of this island for about three miles; and whether he does not know, or has not heard by the tradition of the country, or otherwise, that the first roads that were opened between the lower and upper parts of the Susquehanna, led the traveller within sight of this island? Whether he does not know, or has not heard, that there was an Indian town on this island before the Indian purchase of August 22, 1749?

231. 11th. Whether Jacob M. Haldeman, Esq., does not claim title to the Big Island, No. 3, under, by, and through the title which Thomas Duncan, Esq., in his lifetime, alleged and claimed to the same island, and in, by, and under the possession which Thomas Duncan formerly had of the same island; and whether the said Jacob does not claim title to the said Island No. 3 under, by, and through a deed, purporting to be a deed from John Penn and Richard Penn to Thomas Duncan, bearing date the 19th day of December, in the year 1799, from John Penn and Richard Penn, by their attorney, Edmund Physic, to Thomas Duncan, for a part of the Big Island, No. 3, containing three hundred and fifty acres, then in possession of Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar; and whether it is not recited in the same deed, that the other part of the island was then, on the 19th day of December, 1799, in the possession of George Clark, John Diven, and William Baskins; and whether Jacob M. Haldeman, Esq., did not give the said last-mentioned deed in evidence as a part of his title at and on the trial of the aforesaid action of ejectment No. 11, of April Sessions, 1840, at October Sessions, 1843, in the Circuit Court aforesaid; and whether the same deed was not duly recorded, in the County of Dauphin, in the year 1807?

232. 12th. Whether Jacob M. Haldeman, Esq., does not claim title to the Big Island, No. 3, or to some part of it, by, through, and under a deed, dated the 12th day of July, in the year 1803, purporting to be a deed from John Penn and Richard Penn, by their attorney, John R. Coats, to Thomas Duncan, for a part of the Big Island, No. 3, containing 345 acres and 34 perches? and is it not recited and set forth in this deed, that the land described in it had been in the possession of John Diven, George Clark, and William Baskins? and did not Jacob M. Haldeman give the last-mentioned deed in evidence in support of his title to the Big Island, No. 3, in the aforesaid action of ejectment No. 11, of April Sessions, 1840, at the trial of the cause at October Sessions, 1843? and was not the aforesaid deed duly recorded, in the County of Dauphin, in the year 1807.

233. 13th. Whether Jacob M. Haldeman, Esq., does not claim title to the Big Island, No. 3, by, through, or under a deed made

by one John Fox, calling and styling himself sheriff of the County of Dauphin, and dated in or about the year 1834, in and by which deed the said John Fox undertook and purported to convey to Jacob M. Haldeman, Esq., all the right, title, and interest of Thomas Duncan, Esq., deceased, of, to, or in the Big Island, No. 3? and whether the said deed was not made by John Fox to Jacob M. Haldeman for the said Island No. 3, under and in pursuance of a public judicial sale, called a sheriff's sale, then, lately held and made of the right and title of Thomas Duncan, Esq., deceased, of, to, and in the Big Island, No. 3, by the said John Fox, as the sheriff of the County of Dauphin? and whether Jacob M. Haldeman, Esq., was not the purchaser at such sale of the right and title of Thomas Duncan, Esq., deceased, to the Island No. 3? and whether the last-named deed was not made by John Fox to Jacob M. Haldeman in pursuance of such sale? and whether Jacob M. Haldeman, Esq., did not enter into and take possession of the Big Island, No. 3, under and by virtue of the aforesaid sale and deed, so made by John Fox to Jacob M. Haldeman? and whether the said Jacob, Esq., does not yet hold the possession of the Big Island, No. 3, under and in virtue of the sale and deed so last aforesaid made by John Fox to Jacob M. Haldeman, Esquire?

234. 14th. Whether at and on the trial of the aforesaid action of ejectment No. 11, of April Sessions, 1840, on the common law side of this Court, Jacob M. Haldeman, Esq., did not give in evidence, as part of his title to the Big Island, and in support of the same, the deposition of Robert Clark, as taken and filed in the Circuit Court in that cause?

235. 15th. And that the defendant may answer fully and set forth whether he claims to hold the Big Island, No. 3, by, from, or under the title of John Penn or Richard Penn, or of Thomas Duncan, or of Stephen Duncan, or under the alleged deed from John Fox; and, particularly, whether he claims title to the Big Island, No. 3, under and by virtue of the aforesaid deed of the 19th of December, 1799, or by the deed of the 12th of July, 1803, or by the article of agreement of the 30th of June, 1800, or by all or any of them, or by the deed from John Fox?

236. To this end your orator prays, that the said Jacob M. Haldeman, Esq., may be decreed to exhibit to this Court the deed from John Fox, Sheriff of the County of Dauphin, to the said Jacob M. Haldeman, as given in evidence in the Circuit Court of the United States for the Eastern District of Pennsylvania, at October Sessions, 1843, as set forth in this bill; and that the said Jacob M. Haldeman, Esq., may produce before this Court the said deed of December 19, 1799, from Richard Penn and John Penn, by their attorney, Edmund Physic, to Thomas Duncan, or a certified copy thereof, to the end that the Court may inspect the recitals in said deed; and that the said Jacob M. Haldeman, Esq., may produce before this Court the deed aforesaid of John and Richard Penn, by their attorney, John R. Coats, to Thomas Duncan, of the 12th of July, 1803, or

a certified copy thereof, to the end that the Court may inspect the recitals in said deed.

237. That Thomas Chambers, Esq., administrator de bonis non with the will annexed of the Honorable Thomas Duncan, deceased, may be decreed to exhibit to this Court, on his corporal oath, a statement of the time when Thomas Duncan, Esq., obtained the possession of the Big Island, No. 3, together with an account of the value of the rents of the island, received by Thomas Duncan, Esq., during the whole of the time that he held the possession of the island, from, on, or, about the first day of June, in the year 1802, until, on, or about the first day of April, 1829, together with the interest on the amount of such rents from the end of each year, as the same were received, and that, after deducting from the whole amount of the rents and interest, as aforesaid, the amount and value of the purchase-money originally due to the late proprietors of Pennsylvania by the settlers upon the island, at the rate of forty-one dollars and thirty-three cents and one-third of a cent for each and every hundred acres of the island, together with legal interest on the same from the first day of September, in the year 1749, that said Thomas Chambers, Esq., administrator de bonis non of the Honorable Thomas Duncan, deceased, with the will annexed, may be decreed to pay over to your orator the proper balance so found to be remaining in the hands of Thomas Chambers, Esq., administrator de bonis non with the will annexed of the Honorable Thomas Duncan.

238. And that Jacob M. Haldeman, Esq., may be decreed to exhibit to this Court a full, true, and perfect account, on oath, of the whole amount of the rents and issue of the Big Island, No. 3, received by him since he came into possession of the island, with interest on the same from the end of each year as they were received; also, that he may render an account, on oath, of the value of the timber and wood cut upon and removed from or used on the island by said Jacob M. Haldeman, Esq., together with the interest on the same, and pay the same over to your orator.

239. And that the said Jacob M. Haldeman, Esq., may be decreed to surrender and deliver to your orator, on a day to be named in the decree, the peaceable possession of the Big Island, No. 3, described in this bill of complaint with its tenements and appurtenances, to be held by your orator and his heirs in fee-simple; and that the said Jacob M. Haldeman, Esq., may be decreed to deliver over to your orator any deeds or other muniments of title in the possession of said Jacob M. Haldeman, Esq., appertaining to your orator's title to the said Big Island, No. 3, otherwise called Baskins' Island or M'Elcar's Island, in the Susquehanna River, at the mouth of the Juniata River, in the County of Dauphin, in the State of Pennsylvania.

240. And that your orator may have such further and other relief in the premises, as the nature of the case may require and to this

Court shall seem meet, and that he may be further and otherwise relieved in the premises, according to equity and good conscience.

241. To this end may it please the Court, to grant to your orator the most gracious writ of subpœna of the United States of America, to be directed to Thomas Chambers, Esq., administrator de bonis non cum testamento annexo of the Honorable Thomas Duncan, deceased, and also to Jacob M. Haldeman, Esq., and the rest of the confederates, when discovered; thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be specified, personally to be and appear before this Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein, as to this Court shall seem meet and agreeable to equity and good conscience, and your orator shall ever pray.

ISAAC FISHER,
Solicitor of Complainant.

Plea of Thomas Chambers.

Afterwards, to wit, on the second day of May, A. D. 1849, the plea of Thomas Chambers, administrator de bonis non cum testamento annexo of the estate of Thomas Duncan, deceased, defendant to the bill of complaint of Isaac M. Fisher, is filed, and is in the words and of the tenor following, to wit:

The defendant, by protestation, not confessing or acknowledging all or any of the matters or things, in the said complainant's said bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth plead to all the discovery and relief in and by the said bill sought from or prayed against this defendant, and, for plea, saith, that by an Act of Assembly of the Province of Pennsylvania, passed in the year seventeen hundred and thirteen, entitled "An Act for the Limitation of Actions," it was enacted, that all actions for trespass, debt, account, and upon the case, shall be brought or sued within six years next, after the cause of action accrued, and not after. And this defendant further saith, that, if the said complainant ever had any cause of action against this defendant or against the executors of the said Thomas Duncan, deceased, or against the said Thomas Duncan, deceased, for or concerning any of the matters or things in the aforesaid bill mentioned, which this defendant in no wise admits, such cause of action or suit did accrue or arise above six years before the filing of the complainant's said bill of complaint, and above six years before the serving or suing out process against this defendant to appear to and answer the said bill; and that the said complainant was not at any time within upwards of six years before the filing of the said complainant's bill, or suing out process, as aforesaid, under any of the disabilities mentioned and described in the said act of the legislature.

And this defendant further avers, that neither he, this defendant, nor, to his knowledge or belief, the executors of the said Thomas Duncan, did at any time within six years, since the filing of the said bill, promise or agree to come to any account of the matters and things mentioned in said bill, or to pay the said sum of money there mentioned to the said complainant. And this defendant further avers, that, not admitting in anywise any of the charges or allegations of fraud on the part of the said Thomas Duncan, or by him committed, to be true, yet this defendant, nevertheless, saith, that if any such fraud was committed, or any of the said fraudulent acts or words done or said, or any deceit practised, by the said Thomas Duncan, as in the said bill is alleged, all and singular the said fraud, fraudulent acts, deeds, words, and deceit, were done, committed, said, and practised, by the said Thomas Duncan, more than six years before the filing of the said bill and issuing out or service of the process, in this case, upon this defendant, and that all and singular the said alleged fraud, fraudulent acts, deeds, words, and deceit, if any such there were, were fully known to said complainant more than six years before the filing of the said bill of complaint and issuing of the said process or service thereof upon this defendant. All which matters and things this defendant doth aver to be true, and is ready and willing to maintain and prove, as this honorable Court shall award, and he doth plead the same, in bar, to the whole of the said bill, so far as the same relates to the discovery and relief prayed against this defendant, or the estate of the said Thomas Duncan, deceased; and he doth humbly demand the judgment of this honorable Court, whether he, this defendant, ought to be compelled to make any further or other answer to the said bill.

Thomas Chambers, one of the defendants in the above-named case, being duly sworn, deposes and says, that the above plea is true in fact so far as the facts therein contained are within his knowledge, and so far as they relate to matters and things not within his knowledge, he believes them to be true; and he further says, that the same is not interposed for the purpose of delay.

THOS. CHAMBERS.

Sworn and subscribed, this first day of May, A. D. 1849, before me.

GEORGE PLITT,
U. S. Commissioner.

We, the undersigned, of counsel unto Thomas Chambers, one of the defendants in the above-mentioned bill named, do certify, that, in our opinion, the above plea is well founded in point of law.

R. C. McMURTRIE.

Answer of Jacob M. Haldeman.

Afterwards, to wit, on the day and year last aforesaid, the Answer of Jacob M. Haldeman, defendant, to the Bill of Complaint aforesaid, is filed, and is in the words and of the tenor following, to wit:

The separate Answer of Jacob M. Haldeman, defendant, to the Bill of Complaint of Isaac M. Fisher, complainant: This defendant, reserving to himself all right of exception to the said bill of complainant, for answer thereto, nevertheless, saith, that, on the 17th day of October, 1760, a warrant issued from the proprietaries of the then Province of Pennsylvania, directing, among other things, that all islands in the River Susquehanna should be surveyed for the use of the proprietaries; that on or about the 17th of November, 1760, the then surveyor of the Province executed the said warrant, by surveying inter alia the island in the said river, mentioned in the said bill, under the name of Island No. 3, or Baskins' Island; that the said survey, for the use of the proprietaries, was thereupon, in accordance with the usage in such cases, returned into the Land Office of the said Province on the ; that, by the Act of 1779, commonly called "The Divesting Act," the right and title of the said proprietaries to all lands within the late Province, excepting as is therein excepted, were vested in the Commonwealth of Pennsylvania; that, among the excepted from the provisions and operation of said act, was the island in the bill referred to, which, by virtue of the said act, continued to remain the property of the said proprietaries, until the sales and conveyances by them hereinafter mentioned; that, on the 19th of December, 1799, the said late proprietaries, by deed, duly executed and recorded, conveyed to Thomas Duncan, Esq., the upper part of said island, being three hundred and fifty acres, or thereabouts; that the consideration of the said conveyance was £700, which was paid by the said Duncan to the said late proprietaries or their agent lawfully constituted; that, on the 30th June, 1800, the said late proprietaries, by an instrument in writing, entered into an agreement to sell the residue of said island, being three hundred and fifty acres, or thereabouts, to the said Thomas Duncan, in consideration of £2 per acre; that, on the 12th of July, 1803, the said agreement was consummated by the conveyance of the legal title to the residue of the said island, by deed, duly executed by the said late proprietaries, the purchase-money having been fully paid by the said Duncan, which deed was duly recorded in the proper office; that, under and by virtue of the said conveyances and agreements and of the title thereby acquired, the said Thomas Duncan entered upon and took possession of the whole of the said island on or before the first day of June, 1802, and continued in such possession, holding the same exclusively of and hostile to all other titles whatever from the time of his said entry until the day of his death, which was in the month of November, 1827; that, at the time of the said purchase by the said

Duncan, there were divers persons occupants or residing on the said island, but having no legal or equitable title thereto, who had made some improvements, of very little, if any, value; that this respondent is informed and believes, that the said Duncan, desirous of precluding the possibility of any dispute with them, and to compensate them liberally for all work and labor on the said island, paid to them divers large sums of money by way of compromise of any claim or pretended claim they might have had to the said island or any part thereof; and in June, 1801, took from them releases of all their claims or pretended claims to the said island; that the persons whose interests or claims were thus released, were Baskins, Divens, George Clark, and Thomas McElcar, who are stated in the said bill to have been then in the possession of the said island; that the said releases, &c., obtained for a valuable consideration paid, were given in evidence, having been duly proved on the trial of a certain action of ejectment brought by Peter M'Elcar, in the said bill mentioned, against one Elliott, tenant of this defendant, for the said island, in the Circuit Court for Dauphin County, in March, 1831, in which ejectment the title, or pretented title, of the said Peter, now alleged to have been conveyed to the said complainant, was the one relied on by the then plaintiff; that, by some accident, the said papers or instruments were, during the progress of the said cause, lost, and cannot now be found, though diligent search and inquiry have been made therefor; this defendant, therefore, craves leave to submit to this honorable Court secondary evidence of the contents of the said releases, as evidence of an entire discharge of all possible right, or pretence of right, in all or any of the said parties thereto.

And this respondent further saith, that, after the death of the said Thomas Duncan, an action at law was commenced, in the Court of Common Pleas of Dauphin County, in April Term, 1830 (No. 277), by one Griffith Evans, against Martha Duncan, executrix, and Stephen Duncan, Edward Stiles, and John D. Mahon, executors of Thomas Duncan, aforesaid, deceased; that, on the 30th day of August, 1830, a judgment was recovered for five thousand one hundred and ninety dollars, to be levied of the goods and chattels, lands and tenements, which were of him the said Thomas Duncan, deceased; that, in the Term of November, 1831, a writ, commonly called a fieri facias, issued out of the said Court, commanding the sheriff to levy the said debt and costs of the goods and chattels, lands and tenements, which were of him the said Thomas Duncan, deceased; that, under and by virtue of the said writ, the sheriff of the said county, levied upon the said Island No. 3, or Baskins' Island, referred to in the said bill, which said island was, in due course of law, condemned by the inquest; that thereupon a writ, commonly called a writ of venditioni exponas, issued out of the said Court, as of January Term, 1834, No. 62, whereby the said sheriff was commanded to expose to sale the said island, so as aforesaid levied upon and condemned, which

said writ was returned unsold for want of buyers; whereupon a writ, commonly called an alias venditioni exponas, issued out of said Court, as of April Term, 1834, No. 42, whereby the said sheriff was commanded to expose to sale the said island, so as aforesaid levied upon and condemned. And this respondent further saith, that, in obedience of and pursuant to said writ, the said sheriff did expose the said island to sale by public auction, and that this respondent, at such sale, became the purchaser of said island at the price of $13,775, which said sum of money was duly paid by this respondent to the said sheriff; that thereupon the said sheriff, on the 22d day of April, 1834, acknowledged in the said Court a deed for the said island, sold in pursuance and by virtue of the before-mentioned proceedings, to this respondent; by virtue whereof, this respondent avers, that he is advised and believes he became the owner of the legal title to the said property, and also of all equitable rights or titles, which at any time vested, either in the said proprietaries in their private capacity, or in the said Thomas Duncan, and every person whose estate he had. And he further says, that immediately after the acknowledgment of said deed, this respondent entered upon and took possession of the said island, and has so continued his possession, claiming title from that day to the present time. And this respondent, further answering, saith, that, since the purchase by him, as aforesaid, relying on the title by him thus acquired, and entirely ignorant of the existence of any outstanding equity, he has made divers large and expensive improvements thereon by the erection of buildings, barns, &c., which have cost this respondent upwards of $17,000; and he submits to this Court, that, being the holder of the legal title to the land, and there being no notice of any outstanding equity or claim thereto, he cannot be deprived of his title or possession, under any event, but after compensation made to him for the said expenses by him incurred in the purchase and improvement thereof, more especially not, when the fact is, that the said Peter M'Elcar, in whom was vested all the pretended title of the complainant, had full notice and knowledge of the expenses thus incurring, or the larger part thereof. And this respondent further saith, that he is a purchaser of the said island for a valuable consideration paid, without notice or knowledge of any fraud on the complainant, or any one under whom he claims, or of any outstanding trust, equity, right, or title to the island in any person or persons adverse to the right and title of the said Duncan; and he therefore claims to have all the benefit of being the holder of the legal title under the said Duncan, and of such titles as were in any way vested in him at the time of said purchase and payment of purchase-money by this respondent; and he denies all notice or knowledge of all fraud and of all facts affecting him with notice charged in said bill, of any right, title, or equity, there set up, other than are hereinafter distinctly admitted in his answer responsive to

said bill; and he craves to have the same benefit thereof as if he had pleaded the said matters coupled with an answer in support of the said plea.

And this respondent, further answering, saith, that, from the time when the said Duncan entered upon the said island under the title hereinbefore mentioned, until the commencement of this suit, upwards of forty years have elapsed, during which period the said island has been in the exclusive and hostile, and, as this respondent is informed and verily believes, the uninterrupted occupation and possession of the said Thomas Duncan, during his life, his heirs, or devisees, after his death, and of this respondent, since the sheriff's sale before mentioned; and he is informed and believes, that such a length of possession, coupled with the legal title and payment of money, as aforesaid, is far more than sufficient to bar any pretended claim of the said complainant, even admitting, which is not true, that the whole of the complainant's allegations of fact relating to the acquisition of title by said M'Elcar, and of the fraud committed on him by the said Duncan, were true. And this respondent further avers, that action of ejectment was brought by the said Peter M'Elcar in the Courts of the State, which was pending from 1822 to 1831, which action was twice tried before a jury, and twice removed by writ of error to the Supreme Court; that, in that action and those trials, the title or pretended title of Peter M'Elcar was set up and relied on by the plaintiff there, and Duncan's title relied on by the defendant; that, in both cases, the inferior Courts decided, that the facts should no ground for a recovery against the title of said Duncan, who, it is alleged, was guilty of fraud, and on which it is now sought to overturn the derivative of this respondent, though he was no party thereto or cognizant thereof; that, upon the final hearing of said cause, in the Supreme Court, which was the only judgment of said Court upon the legal or equitable merits of the respective parties, it was solemnly adjudged, that such a state of facts as the then plaintiff, Peter M'Elcar, exhibited in evidence, did not, by the law of Pennsylvania, show any right or title by which the said plaintiff was entitled to recover possession or title to said island from the said Duncan, either at law, or in equity. And the respondent avers, that, though true it is that some modes of relief used in Courts of Equity cannot be followed in the ordinary tribunals of this State, yet it now is and always has been the settled law of the land, that, if the plaintiff in ejectment has any right or title to the possession or ownership of land, which would be enforced in Courts of Equity, by compelling delivery of possession or a conveyance, such right or title will be the ground for a recovery in such ejectment; and he avers, that the said Courts, in which said ejectments were tried and determined, had full jurisdiction and power to decide upon and enforce all or any right which could possibly have arisen, either in law or equity, out of the facts alleged in the said bill; and he therefore craves to have the same benefit of such final and complete judgments on the

equitable right, or pretence of right, which, in the said bill, is set up, as if he had pleaded the same; or, if such judgments be not conclusive as to the legal title, the respondent averring, that such final judgment having been rendered before his purchase, as aforesaid, and he relying thereon, as clear evidence, that the apparent legal title of said Duncan was perfect by the laws of Pennsylvania, the respondent is advised, that he, being a purchaser for value under such circumstances of a title so situated, and no notice, or pretence of notice, given, by the pretended adverse equitable interest at the public and notorious act of the said sheriff's sale, and at the time and during the public and notorious acts of improvements made by him, and expenditure as before mentioned, no Court of Equity would enforce such a title as is set up by the complainant, to the destruction and ruin of the holder of the legal title acquired under such circumstances.

This respondent, therefore, submits the circumstances last mentioned as an equitable bar to the relief prayed against this respondent, and craves the benefit thereof, as if he had pleaded the same, supported by such parts of the answer hereafter made, as would be necessary and proper to support such plea.

And this respondent, further answering, saith, that, as to the second article, in the said bill contained, he submits that its truth is dependent on the question, whether the Swedish and the Dutch settlers, resident within the bounds of the Province of Pennsylvania, as before the grant to the said Penn, were wild beasts or savage men; if they were, the allegation is true, otherwise he believes it to be untrue; and as to the statements in the bill respecting the usages and customs governing the acquisitions of titles to land, and the rights of settlers thereunder, this respondent is advised, the same to be matters of law for the Court to determine, and not matters of fact to be put in issue and tried by a jury, or part of evidence addressed to a Court, as on a question of fact; he therefore craves to have the same benefit as if he had demurred to so much of the said bill as seeks to put in issue such statements; but not waiving the same, this respondent says, he is advised, and believes, that, by the law of the land before and since the Revolution, and by the use and custom of the proprietaries, and of the Land Office prior to the Revolution, islands in the Susquehanna River were not subject to the ordinary and common rules and usages respecting the settlement of, and acquisition of, titles to vacant lands, but they were excluded therefrom; that no title could be acquired to such islands, but under a special agreement with the proprietaries, fixing the quantity and price, and no title, or pretence of title, was acquired by one entering or occupying or cultivating the same, but that such occupier was a mere tenant at sufferance, and could be lawfully ejected by the proprietaries, and that said proprietaries might lawfully sell and convey to strangers all or any of said islands, with equal effect whether settled or unsettled. And this respondent saith, that, to the best of his

information, it is not true that the price at which the proprietaries sold their vacant lands, in the Susquehanna River, within the Indian purchase of 1749, was £15 10*s.* per hundred acres, as stated in the bill; nor was there, as he believes, any other fixed price for such land, but that the price of all such lands were to be fixed by positive agreement between the proposed purchasers and the proprietaries, or their agents, and was as much a matter of uncertainty as the price of manor lands, or any other lands not open to settlement on common terms. And this respondent denies, as to his information and belief, that the proprietaries of Pennsylvania, on the 1st September, 1749, or at any other time, granted the island, in the said bill mentioned, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, or any of them, or that they made any such agreement as is therein stated with the said parties respecting the title thereto, or that the said supposed grantees made any such agreement on their part as is therein averred; and he, in like manner, denies, that Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, or any of them, made the entry, in the said bill mentioned, under the promises, assertions, permissions, or grants, there stated; that, with respect to the fact of such entries, he has no knowledge or information saving by hearsay, from witnesses, and evidence read during the trial of the ejectment against this respondent, which was long since the purchase payment by him of the price of the said island; and though true it is that, since the said purchase, he has been thus informed, that prior to and at the time of the purchase by the said Thomas Duncan, there were divers persons living on the said island, yet, as to the alleged transfers of title from one to the other, and as to the alleged division of the island among them by metes and bounds, he denies, in manner aforesaid, inasmuch as he verily believes that such occupants set up and pretended no other right or title until after the purchase by Duncan, other than that acquired by naked occupation, with the implied assent of the owner of the land, being the late proprietaries; and, in like manner, denies, that said occupiers cleared and cultivated their land in the manner alleged, as he is informed and believes; that, when the said Duncan purchased the island, but a small part was under cultivation, and that very slight; and that the buildings thereon were mere huts, and ruinous, and were such only as mere occupants might erect for their own convenience. And this respondent, as to so much of the said bill as charges fraud on John Armstrong in making the said survey of the said island in the year 1760, and also in causing the survey to be returned to the Land Office, craves to have the same benefit as if he had demurred to so much of the said bill, because that the facts constituting the alleged fraud are not averred or mentioned in such way that this respondent can answer the same; and not waiving the same, this respondent avers, that said survey was made and returned in good faith, and not fraudulently, but in the honest exercise of the

equitable right, or pretence of right, which, in the said bill, is set up, as if he had pleaded the same; or, if such judgments be not conclusive as to the legal title, the respondent averring, that such final judgment having been rendered before his purchase, as aforesaid, and he relying thereon, as clear evidence, that the apparent legal title of said Duncan was perfect by the laws of Pennsylvania, the respondent is advised, that he, being a purchaser for value under such circumstances of a title so situated, and no notice, or pretence of notice, given, by the pretended adverse equitable interest at the public and notorious act of the said sheriff's sale, and at the time and during the public and notorious acts of improvements made by him, and expenditure as before mentioned, no Court of Equity would enforce such a title as is set up by the complainant, to the destruction and ruin of the holder of the legal title acquired under such circumstances.

This respondent, therefore, submits the circumstances last mentioned as an equitable bar to the relief prayed against this respondent, and craves the benefit thereof, as if he had pleaded the same, supported by such parts of the answer hereafter made, as would be necessary and proper to support such plea.

And this respondent, further answering, saith, that, as to the second article, in the said bill contained, he submits that its truth is dependent on the question, whether the Swedish and the Dutch settlers, resident within the bounds of the Province of Pennsylvania, as before the grant to the said Penn, were wild beasts or savage men; if they were, the allegation is true, otherwise he believes it to be untrue; and as to the statements in the bill respecting the usages and customs governing the acquisitions of titles to land, and the rights of settlers thereunder, this respondent is advised, the same to be matters of law for the Court to determine, and not matters of fact to be put in issue and tried by a jury, or part of evidence addressed to a Court, as on a question of fact; he therefore craves to have the same benefit as if he had demurred to so much of the said bill as seeks to put in issue such statements; but not waiving the same, this respondent says, he is advised, and believes, that, by the law of the land before and since the Revolution, and by the use and custom of the proprietaries, and of the Land Office prior to the Revolution, islands in the Susquehanna River were not subject to the ordinary and common rules and usages respecting the settlement of, and acquisition of, titles to vacant lands, but they were excluded therefrom; that no title could be acquired to such islands, but under a special agreement with the proprietaries, fixing the quantity and price, and no title, or pretence of title, was acquired by one entering or occupying or cultivating the same, but that such occupier was a mere tenant at sufferance, and could be lawfully ejected by the proprietaries, and that said proprietaries might lawfully sell and convey to strangers all or any of said islands, with equal effect whether settled or unsettled. And this respondent saith, that, to the best of his

information, it is not true that the price at which the proprietaries sold their vacant lands, in the Susquehanna River, within the Indian purchase of 1749, was £15 10*s.* per hundred acres, as stated in the bill; nor was there, as he believes, any other fixed price for such land, but that the price of all such lands were to be fixed by positive agreement between the proposed purchasers and the proprietaries, or their agents, and was as much a matter of uncertainty as the price of manor lands, or any other lands not open to settlement on common terms. And this respondent denies, as to his information and belief, that the proprietaries of Pennsylvania, on the 1st September, 1749, or at any other time, granted the island, in the said bill mentioned, to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, or any of them, or that they made any such agreement as is therein stated with the said parties respecting the title thereto, or that the said supposed grantees made any such agreement on their part as is therein averred; and he, in like manner, denies, that Joseph Thornton, Michael Paxton, George Clark, Francis Baskins, or any of them, made the entry, in the said bill mentioned, under the promises, assertions, permissions, or grants, there stated; that, with respect to the fact of such entries, he has no knowledge or information saving by hearsay, from witnesses, and evidence read during the trial of the ejectment against this respondent, which was long since the purchase payment by him of the price of the said island; and though true it is that, since the said purchase, he has been thus informed, that prior to and at the time of the purchase by the said Thomas Duncan, there were divers persons living on the said island, yet, as to the alleged transfers of title from one to the other, and as to the alleged division of the island among them by metes and bounds, he denies, in manner aforesaid, inasmuch as he verily believes that such occupants set up and pretended no other right or title until after the purchase by Duncan, other than that acquired by naked occupation, with the implied assent of the owner of the land, being the late proprietaries; and, in like manner, denies, that said occupiers cleared and cultivated their land in the manner alleged, as he is informed and believes; that, when the said Duncan purchased the island, but a small part was under cultivation, and that very slight; and that the buildings thereon were mere huts, and ruinous, and were such only as mere occupants might erect for their own convenience. And this respondent, as to so much of the said bill as charges fraud on John Armstrong in making the said survey of the said island in the year 1760, and also in causing the survey to be returned to the Land Office, craves to have the same benefit as if he had demurred to so much of the said bill, because that the facts constituting the alleged fraud are not averred or mentioned in such way that this respondent can answer the same; and not waiving the same, this respondent avers, that said survey was made and returned in good faith, and not fraudulently, but in the honest exercise of the

said Armstrong's official duty, and in due obedience to the warrant to him directed, so far as this respondent is informed and believes; and he expressly avers, that the said island was the subject of such survey, more especially as, by the complainant's own showing, it was at that time wholly deserted by even the pretended residents thereof. And he, in like manner, denies, that the said proprietaries, their agents, or the said Deputy Surveyor, had any knowledge or notice, that the said island was appropriated in the manner alleged in the said bill, or in any other manner, than to the private use of the said proprietaries.

And this respondent denies the allegation in the 71st article of said bill, but, on the contrary, avers, that the said survey, in 1760, was the proper form of making claim to the said island, and giving lawful notice of the intent of the said proprietaries to hold the same as their private property, and that, by said warrant, such claim and notice was fully and lawfully made. And this respondent admits, that an entry was made in the year 1799, in July, or perhaps earlier, on the said island, by person or persons acting for and under the authority of the Penns, late proprietaries; and that notices were at that time given, that the said occupants had not any title to said island, but that the same was the property of the Penns; but he denies, that said entry was forcibly made, and, on the contrary, he avers, the same was done fairly and honestly, and was probably designed to prevent disputes about the title of the island, which, it is probable, the agent of the Penns was then anxious to dispose of. And, so far as the same are charged to have been inequitably or unjustly or fraudulently done, this respondent craves to have the benefit of a demurrer to so much of the bill, because that the facts, from which fraud or want of equity might be inferred or in which it consisted, are not set forth or put in issue, so that this respondent is able to traverse or admit the same; and he admits, that, about the year 1799, a deed was executed, and delivered to the said Thomas Duncan by the said Penns, but, for greater certainty, this respondent craves leave to refer thereto when produced; and he admits, it did purport to convey a large part of the said island to said Duncan. And he denies, as to his information and belief, that there was any fraud intended or perpetrated, either in the procurement or execution of said deed or conveyance, by the said Duncan or Physic, or their agents, or any person or persons under whom this complainant professes to claim; and he believes and avers that the same were made with no other intent or design than fairly to purchase and sell property then beginning to become valuable, which had been, for a long time, lying wholly unproductive to the owner, and which it appeared that the persons living on the land had no apparent design to come forward and make a bargain therefor; and he admits, that the said Thomas Duncan, with the intention of removing the occupants, or of compelling them to attorn to him, did enter on the said island in the

year 1800, or earlier, and did procure surveys to be made; and he has no doubt said Duncan did assert, that the Penns owned all the land, except the part they had sold to him; but he denies, that they owned such part so sold to him. And this respondent denies that any of the said occupiers were or could have been deceived by any such assertions, if any such were made, since they were true, as this respondent believes, both in fact and in law; and he is advised, that this is entirely immaterial, since certain it is, that Duncan believed them to be true, and, on the faith of such belief, bought the property and paid the price, as this respondent believes; and such assertions were opinions of matters of law, and were, therefore, matters as well known, or capable of being known, by one party, as the other. And this respondent admits it to be true, that the agent of the said Penns did give notice to Baskins and others, occupants of part of the island, in the year 1800, to come down and purchase such parts as they occupied, or the same would be sold to other persons; but he denies that there was any unlawful confederacy or fraud in such notice, and, on the contrary, avers, that in itself it proves, that the said agent had no desire to take advantage even of any possible improvements made by such occupiers, but, on the contrary, was willing to give them a preemption-right, if they could come forward and make and comply with any bargain for the land; and he denies that such notice was given with any such intent as charged in said bill; and this respondent has been informed, and believes, that, after said notice, the said occupants, well knowing they had no title to the island or any part of it, and that they were unable or unwilling to purchase it, abandoned all idea of purchasing the same, and permitted the said Physic, agent of the said Penns, to make a sale conveyance thereof to the said Duncan, who thereupon paid the agreed purchase-money therefor; and he is advised that, by such acts, the said occupants are estopped or precluded from now setting up such a title, as they pretend, to the island, since it was their bounden duty to assert their title, if any they had, and not permit the agent to sell the same to another person, under the belief a valid title would pass thereby; and he admits that, some time in the year 1800, the said Physic did make an agreement with the said Duncan for the sale of the residue of said island on behalf of the Penns, but that the same was made with any fraudulent design, or that the same deceived the said occupiers, this respondent utterly denies, and more especially, not the said Peter M'Elcar; on the contrary, he avers, that the same was made for the purpose of disposing of the said land, which the said occupants, after notice, had declined or neglected to purchase or bargain for. And he further admits, that said Duncan, in the year 1800, after he had thus become the legal or equitable owner of the whole of the said island, did enter thereon, and give notice to quit to all the persons then in possession of the same, and especially to Peter M'Elcar, and that he also informed them,

that he was the owner of the whole of the said island, and they had no title; but, as the said assertions were both true and lawful, this respondent denies any part thereof to be inequitable, and he submits that, as no matters of fact are averred to have been misstated, or to have been exclusively within the knowledge of the said Thomas, the residue of the said assertions were questions of law, and could not, under the circumstances alleged, be any ground for a decree for the complainant. And this respondent is ignorant whether or not the said Duncan made any of the alleged assertions respecting the existence of papers in the Land Office, and he prays that said complainant may be put to the proof thereof, and he believes, that such assertions would warrant the belief that said Duncan had seen such papers, from which, among other things, it may be, that the settled understanding of the law on this subject has arisen. And this respondent admits, that said Duncan did offer and paid to the said occupiers a sum of money, in compromise of any pretended right and as a remuneration for any improvements they had or may have made, for the purpose of buying his peace, and also, very probably, out of a desire, not to have any possible benefit from their labor, without making compensation; and he avers, that said Duncan did thereupon, take releases from them of all claim, or pretence of claim, to the said island, as hereinbefore mentioned; and he submits, that such releases cannot, by the settled rules of law, be construed into any admission of any right in the releasors, more especially when obtained under the allegations, as stated by the complainant and admitted by the defendant, that no right or title was admitted or recognized by said Duncan to have been in the said occupants; and he does not believe that said Duncan ever used so idle a threat as the use of martial law, though he may have declared he would eject them by process executed by the marshal of this honorable Court. And this respondent admits that, in the year 1802, or at some earlier period, the persons residing on said island did agree to become, and did become, the tenants of the said Thomas Duncan for the said island, and so continued, until they subsequently voluntarily left the premises; but that they became so through ignorance, mistake of their rights, delusion, fear, or intimidation, this respondent utterly denies, as to his information and belief; and he is advised that, supposing the facts were true, as alleged, they are immaterial, being mere ignorance or mistake of questions of law, into which either party may well have fallen, since the judgment of the Supreme Court of the Commonwealth decided, that the title of the said Duncan was the better title, and that, under the circumstances, he was entitled to retain the island, and every part thereof. And he further denies all and all manner of notice or knowledge of all or any of the alleged frauds, threats, intimidations, delusions, or mistakes, perpetrated or produced on the said occupants, by the said Duncan, or any other person, until long after the purchase and payment by him of the purchase-money of the

said island, as before set forth; and he prays that he may have the benefit of this denial in support of his plea of purchase for a valuable consideration, without notice. And this respondent further saith, that he believes the value of the island, at that time, was about the price paid for it by the said Duncan; and he denies that the said Duncan, on the first June, 1802, either by fraud or without consideration, entered or took possession of the island, and avers, that it was taken honestly, and for a valuable consideration paid; and he further denies all fraud in the receipts of the rents by the said Duncan. And this respondent, as to so much of the said bill as charges fraud in the deed of 1803, made by the Penns to the said Duncan, craves to have all the benefit of a demurrer, because that the facts from which said fraud may be inferred, or in which it consisted, or on whom it was perpetrated, are not averred or put in issue, and are, therefore, not traversable; but, not waiving the same, this respondent denies all and all manner of fraud, in said conveyance, upon or by any person, to the best of this respondent's information and belief; and he denies that the said deeds, &c., are notice to him of the facts averred by the complainants, but, on the contrary, he avers, that, saving the legal inference of notice, which he submits to this Court, he had no notice or knowledge of any other claim by the said occupants, other than their actual possession; and that one of them, Peter M'Elcar, had set up some claim, and had, after full and fair trials, been completely defeated therein. And he further denies all notice or knowledge or belief of any other title existing to the land at the time of this purchase and payment aforesaid, other than a legal and equitable fee-simple vested in the said Thomas Duncan and his heirs. And this respondent further denies, as to his information and belief, that any of the said occupiers mentioned in the said bill, were deceived or rendered ignorant of their rights by the said Duncan; and also, that they continued in their said state of ignorance; and more especially does he deny this as to the said Peter M'Elcar; and he avers, that he is informed and believes, that said Peter was informed of all the said pretended acts and declarations of the said Duncan, and of the attornment to him of the said occupants, at the time, or very soon after they occurred, and, knowing the same, he slept on his pretended equity until the ejectment, mentioned in the bill, somewhere about the year 1822–3.

And this respondent, further answering, saith, that all the persons who were tenants of the said Duncan in the year 1822, and for some years afterwards, are now dead, with one exception, viz., William Elliott, and that he has long since removed out of the State to a distant part of the country; that this respondent has inquired of two persons, members of the families of two of the said tenants, one of whom resided there until 1823, and one from 1822 to 1828, and from such inquiries this respondent answering saith, that, according to his information and belief, the assertions in the said bill, respecting the

alleged entries by the said Peter M'Elcar in 1822, and for seven or eight years thereafter, are unfounded in fact; that he is informed that said M'Elcar was upon the island during said years, but that he went there for the purpose or alleged, or that he gave notice to the tenants that he entered, claiming title, this respondent, on his information and belief, utterly denies; he is informed, and believes it to be true, that said Peter was occasionally, during those years and subsequently, employed by some of the tenants as a laborer, and that sometimes, when drunk, he would say that the island was his, and he meant to have it, but that this was done in such a manner as only to excite pity and contempt, and by no means to produce any impression of a formal demand thereof; and he submits to the Court, whether it is likely that such entries could have been made without the members of the tenant's family distinctly remembering the facts, and whether such were likely to have been continued in the manner alleged, whilst an ejectment was pending, in which all the rights, if any had, would be enforced, in aid of which such entries were nugatory. And this respondent submits to the Court, whether, under the circumstances disclosed, such entries can affect such a title as this respondent has, the same being legal, he having no notice thereof until long after his conveyance executed, and payment of the purchase-money as aforesaid, which notice this respondent utterly denies. And this respondent admits the bringing of the said ejectment, and the reversal of the judgment therein, in the Supreme Court; but he denies that such reversal was, on any point, material to the parties, being on a mere question of evidence; and he further admits, that the said cause was again tried in the Circuit Court of this Commonwealth, and resulted as in the bill is stated; but this respondent, as to so much of the bill as charges fraud in procuring said verdict and judgment, craves to have the same benefit as if he had demurred to so much of the said bill, for that the facts, from which said fraud may be inferred, or in which it consisted, are not averred or put in issue in a traversable manner, and also, because that between parties and privies the proceedings are conclusive, and also, because that the fraud insinuated, though not expressly charged, is not triable in any court other than one sitting on an impeachment; and, not waiving these objections, this respondent denies all and all manner of fraud, as to his information and belief, in all and any of the said proceedings; and, on the contrary, avers, that the same was fairly and fully tried, after the advantage obtained of seeing what it was the defendant relied on; that the questions in dispute were those of law and fact, involving the whole right of the then plaintiff, and the same were finally decided for the defendant; that the said Courts had full, complete, and final jurisdiction of the cause, and that the title of the complainant, if any he had, was then vested in the then plaintiff. And this respondent is advised, that neither this nor any other Court have the jurisdiction to examine into the

questions raised in the 168th article of said bill. And this respondent, as to so much of the said bill as charges fraud or pretence in the judicial sale under which this respondent claims title, claims to have all the benefit of a demurrer thereto, because that the facts from which such alleged fraud or pretence might be inferred, or in which it consisted, are not averred or put in issue, wherefore this respondent has had no means to traverse the same, nor is he able to discern in what manner it is that such sale is alleged or supposed to have been fraudulent or pretended. And, not waiving this objection, this respondent denies utterly, so far as he has any knowledge, information, or belief, all the said allegations of fraud or pretence, and on the contrary, avers that there was a judgment of a court of competent jurisdiction binding the property, and that a fair and bona fide sale was made thereunder, and that a large sum of money was paid by this respondent, which was duly distributed by the Court having jurisdiction thereof. And he denies all notice or knowledge of the title and possession of the said Thornton and others, at the time of the payment by him of the purchase-money aforesaid, other than was derived from the recitals in his title-deeds, as before mentioned; and so far as the same gave him notice of anything, he well knew that there had been thirty years' possession under the title he purchased, and a final judgment of the Supreme Court, that the pretended right set up by one only of the said persons named in the said recitals, was not sufficient to entitle him to recover, in law or equity, against the said Duncan.

And this respondent denies that he holds no other or better title than the said Thomas and Stephen Duncan; and, on the contrary, he insists that he holds their title, free and discharged from all equities personally affecting them, or the said title, whilst in their hands, and free from all frauds affecting the land in like manner, and that this title is further much strengthened by the lapse of time and supineness of the complainant, and those under whom he claims, in not prosecuting their claim, if any they had, and in permitting this respondent to purchase and improve the said lands without setting up their supposed equity, and immediately prosecuting it. And this respondent further saith, that he hath made diligent inquiry of his tenants, during the year 1839, and from such inquiries, as to his information and belief, he says that he utterly denies the allegations of any entry by the said Peter M'Elcar, in the year 1839, in the manner or for the purpose alleged. That he is informed and believes that no entry was made by the said Peter for the purpose of claiming title, or giving notice thereof, until 1840, after his fraudulent conveyance to the complainant; that though true it is said Peter was on the island at divers times, yet he is informed by those living on the island, and verily believes, that no claim was made, or anything said or done which could induce the tenants to suppose he came there for any such purpose, and he believes that such allegations are

alleged entries by the said Peter M'Elcar in 1822, and for seven or eight years thereafter, are unfounded in fact; that he is informed that said M'Elcar was upon the island during said years, but that he went there for the purpose or alleged, or that he gave notice to the tenants that he entered, claiming title, this respondent, on his information and belief, utterly denies; he is informed, and believes it to be true, that said Peter was occasionally, during those years and subsequently, employed by some of the tenants as a laborer, and that sometimes, when drunk, he would say that the island was his, and he meant to have it, but that this was done in such a manner as only to excite pity and contempt, and by no means to produce any impression of a formal demand thereof; and he submits to the Court, whether it is likely that such entries could have been made without the members of the tenant's family distinctly remembering the facts, and whether such were likely to have been continued in the manner alleged, whilst an ejectment was pending, in which all the rights, if any had, would be enforced, in aid of which such entries were nugatory. And this respondent submits to the Court, whether, under the circumstances disclosed, such entries can affect such a title as this respondent has, the same being legal, he having no notice thereof until long after his conveyance executed, and payment of the purchase-money as aforesaid, which notice this respondent utterly denies. And this respondent admits the bringing of the said ejectment, and the reversal of the judgment therein, in the Supreme Court; but he denies that such reversal was, on any point, material to the parties, being on a mere question of evidence; and he further admits, that the said cause was again tried in the Circuit Court of this Commonwealth, and resulted as in the bill is stated; but this respondent, as to so much of the bill as charges fraud in procuring said verdict and judgment, craves to have the same benefit as if he had demurred to so much of the said bill, for that the facts, from which said fraud may be inferred, or in which it consisted, are not averred or put in issue in a traversable manner, and also, because that between parties and privies the proceedings are conclusive, and also, because that the fraud insinuated, though not expressly charged, is not triable in any court other than one sitting on an impeachment; and, not waiving these objections, this respondent denies all and all manner of fraud, as to his information and belief, in all and any of the said proceedings; and, on the contrary, avers, that the same was fairly and fully tried, after the advantage obtained of seeing what it was the defendant relied on; that the questions in dispute were those of law and fact, involving the whole right of the then plaintiff, and the same were finally decided for the defendant; that the said Courts had full, complete, and final jurisdiction of the cause, and that the title of the complainant, if any he had, was then vested in the then plaintiff. And this respondent is advised, that neither this nor any other Court have the jurisdiction to examine into the

questions raised in the 168th article of said bill. And this respondent, as to so much of the said bill as charges fraud or pretence in the judicial sale under which this respondent claims title, claims to have all the benefit of a demurrer thereto, because that the facts from which such alleged fraud or pretence might be inferred, or in which it consisted, are not averred or put in issue, wherefore this respondent has had no means to traverse the same, nor is he able to discern in what manner it is that such sale is alleged or supposed to have been fraudulent or pretended. And, not waiving this objection, this respondent denies utterly, so far as he has any knowledge, information, or belief, all the said allegations of fraud or pretence, and on the contrary, avers that there was a judgment of a court of competent jurisdiction binding the property, and that a fair and bona fide sale was made thereunder, and that a large sum of money was paid by this respondent, which was duly distributed by the Court having jurisdiction thereof. And he denies all notice or knowledge of the title and possession of the said Thornton and others, at the time of the payment by him of the purchase-money aforesaid, other than was derived from the recitals in his title-deeds, as before mentioned; and so far as the same gave him notice of anything, he well knew that there had been thirty years' possession under the title he purchased, and a final judgment of the Supreme Court, that the pretended right set up by one only of the said persons named in the said recitals, was not sufficient to entitle him to recover, in law or equity, against the said Duncan.

And this respondent denies that he holds no other or better title than the said Thomas and Stephen Duncan; and, on the contrary, he insists that he holds their title, free and discharged from all equities personally affecting them, or the said title, whilst in their hands, and free from all frauds affecting the land in like manner, and that this title is further much strengthened by the lapse of time and supineness of the complainant, and those under whom he claims, in not prosecuting their claim, if any they had, and in permitting this respondent to purchase and improve the said lands without setting up their supposed equity, and immediately prosecuting it. And this respondent further saith, that he hath made diligent inquiry of his tenants, during the year 1839, and from such inquiries, as to his information and belief, he says that he utterly denies the allegations of any entry by the said Peter M'Elcar, in the year 1839, in the manner or for the purpose alleged. That he is informed and believes that no entry was made by the said Peter for the purpose of claiming title, or giving notice thereof, until 1840, after his fraudulent conveyance to the complainant; that though true it is said Peter was on the island at divers times, yet he is informed by those living on the island, and verily believes, that no claim was made, or anything said or done which could induce the tenants to suppose he came there for any such purpose, and he believes that such allegations are

sheer fabrications or imaginations. And this respondent denies that said conveyance from Peter M'Elcar to complainant was made for a valuable consideration, and avers that if anything was paid, it was but a trifle; that the said Peter, when examined on the subject under oath, refused to give any information on the subject of what was the consideration or bargain between himself and complainant, and he therefore believes that said conveyance was got up for the purpose of giving this Court jurisdiction, and that said Peter was to be compensated out of, or in some way interested in the result; he therefore prays that the same may be proved by the complainant.

And this respondent, admitting the decision of this Court to have been finally upon the want of legal title, avers that the Court previously declared that, under the circumstances proved, there was no ground for a recovery in law or equity. And as to the charge of covinously removing the said suit from the District Court and Common Pleas to the Circuit Court, this respondent craves to have the same benefit as if he had demurred thereto, because that the facts upon which such fraud or covin are founded, or from which they may be inferred, are not averred or put in issue, nor are they known to this respondent, nor had he any notice of them at the time of the execution of his deed, as aforesaid.

And he flatly denies the allegation of the 196th article of the said bill, as to all things material. And he denies, as to his information and belief, that said Peter was rendered poor and unable to prosecute his claim by or through any fraud or deceit of the said Duncan; he craves that the complainant shall be compelled to specify his facts, before this respondent is called upon to answer his allegations. And as to the charge of fraudulent pretences of right or title to the island, insisted on in the Courts of the State, this respondent denies all knowledge, information, and belief of the truth of such charges, so far as he can discern the meaning of the complainant; but, for as much of the facts, constituting such fraud, or charges of fraud, are not averred, this respondent craves to have the same benefit and advantage as if had demurred thereto; nevertheless, he believes that no other allegations or facts were stated than such as were true in point of fact.

And this respondent denies that from the year 1822 the said Peter has prosecuted his claim with all due diligence and with his utmost ability, saving so much of the time as elapsed from the bringing of his ejectment until the completion thereof. And to the several interrogatories in the said bill contained, this respondent answering, saith:

To the first he says, he is, and he obtained it at or soon after the execution of the sheriff's deed, above referred to.

2d. He does.

3d. He believes it had; but declines stating the evidence of his belief, it being well settled that no man is bound to discover the evidence by which he means to support his allegation.

4th. As at present informed he is not personally aware of any such warrant, letter of instruction, memorial, or order existing.

5th. He believes there were divers documents which show that from a very early period, if not at all times, the said islands were held as the private property of the Penns; that they consist in part at least of divers leases for the islands and letters respecting them; but the same are matters of public judicial history, and are no more matters of discovery than the pages of the reports in which the law bearing upon defendant's title are to be found; this respondent therefore declines further answering the interrogatory, and craves the benefit of a demurrer to the same.

6th. That he believes and expects to prove that such notice was given in the amplest manner in or about the year 1760.

7th. Respondent demurs to this interrogatory for the reasons set forth in the answer to the 5th interrogatory.

8th. Respondent demurs to this interrogatory, it being one he is in no wise bound to make such inquiries as will enable him to answer, he having no personal knowledge on the subject.

9th. Respondent demurs to this for the reasons stated in the 5th answer.

10th. He admits this fully, and avers that the facts being so, it was the more obligatory on Peter M'Elcar to give notice of his claim and avoid the expenditure made by respondent.

11th and 12th. He does so claim title in part, and as to the recitals and registry, they will speak for themselves when produced, as they will be at the hearing.

13th. He does.

14th. He did.

15th. He does. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is charged in said bill, without this, that there is any other matter, cause, or thing in said bill contained, material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered, confessed, traversed, avoided, or denied, is true, to the knowledge or belief of this defendant, all of which he will aver and prove as the Court may direct; and he prays he may be dismissed with his costs and charges in this behalf most wrongfully sustained.

R. C. McMURTRIE,
GARRICK MALLORY,
Of Counsel with Defendant.

Jacob M. Haldeman, the above-named respondent, being duly sworn according to law, deposes and says, that the matters and things in the above answer contained, so far as they related to the acts and doings of this respondent, are true; and so far as they relate to the acts and doings of any other person or persons, he believes them to be true.

J. M. HALDEMAN.

Subscribed this 18th day of October, A. D. 1848, before me.
N. B. ELDRED,
Pres. Judge.

Replication.

Afterwards, to wit, on the 8th day of March, A. D. 1850, the replication of the complainant is presented by his solicitor, Wm. L. Hirst, Esq., and ordered to be filed; which replication is in the words and tenor following, to wit:

And now this repliant, saving and reserving unto himself all and all manner of advantage and exception to the manifold insufficiencies of the said answer, for replication thereunto, saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in law, to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

Appointment of Charles A. Snyder, Esq., commissioner to take testimony.

Afterwards, to wit, on the day and year last aforesaid, on the motion of William L. Hirst, Esq., solicitor for the complainant, the Court here appoint Charles A. Snyder, Esq., of Harrisburg, Pennsylvania, a commissioner to take testimony on both sides, and report the same to the Court.

Testimony taken under commission to Charles A. Snyder, Esq.

Afterwards, to wit, on the twenty-second day of October, A. D. 1851, the testimony taken under the commission to Charles A. Snyder, Esq., is presented and filed, and is in the words and of the tenor following, to wit:

Pennsylvania, Dauphin County, *sct.*

In pursuance of the annexed commission, personally appeared before Charles A. Snyder, the commissioner, at his office, in the borough of Harrisburg, on Wednesday, the 5th day of June, A. D. 1850, between the hours of 8 o'clock A. M. and 8 o'clock P. M. of said day, the following named witnesses, to wit:

Philo C. Sedgwick, Esq., aged thirty-nine years, a witness on the part of the plaintiff, being duly sworn according to law, doth depose and say, and make answer to the following interrogatories, as follows, viz.:

Interrogatory 1st. Witness answers: I do not know the plaintiff; I know the defendant.

Interrogatory 2d and 3d. I have; and delivered it to Isaac Fisher, Esq., about the thirtieth day of September, 1842. I was the prothonotary of the Supreme Court of the Middle District of Pennsylvania, and am now prothonotary of said court.

Interrogatory 4th. I have seen all the depositions named in this interrogatory on the 30th September, 1842, at the prothonotary's office of the Supreme Court, at Harrisburg. They were in a ragged condition, much as they now appear, and were filed in a suit entitled, Peter M'Elcar against William Elliot and others, No. 43, of May term, 1831. I did deliver the aforesaid depositions to Isaac Fisher, Esq. I withdrew the depositions from the record under the order of the Supreme Court. These are the depositions now before the commissioner.

Interrogatory 6th. They are the same depositions.

Interrogatory 7, 8, 9, 10, 11, 12, 13, and 14. Deponent makes no answer, having no knowledge of the matters referred to in the said interrogatories.

Interrogatory 15th. I live in Harrisburg, Pennsylvania, over one hundred miles from Philadelphia.

Interrogatory 16th. I do not.

P. C. SEDGWICK.

Sworn and subscribed.

C. A. SNYDER,
Commissioner.

At the same time came Isaac Fisher, Esq., aged fifty-five years, a witness on the part of the plaintiff, who being duly sworn, according to law (defendant objects to the competency of the witness), deposes and says:

Interrogatory 1st. I know both the parties in this action.

Interrogatory 2d. I have seen the record named in this interrogatory, and it is now before the Commissioner.

Interrogatory 3d. Philo C. Sedgwick was, and now is prothonotary of the said court.

Interrogatory 4th. I have seen all the depositions named in this interrogatory. They are now in my possession, and before the Commissioner. I received them from the Prothonotary of the Supreme Court, under an order of the Supreme Court of Pennsylvania, for the Middle District, on or about the 30th of September, 1842.

Interrogatory 5th. These are the same depositions before the Commissioner.

Interrogatory 6th. These are the same depositions I received from Mr. Sedgwick, the Prothonotary of the Supreme Court.

Interrogatory 7th. These depositions were, I believe, all read in evidence on the part of the plaintiff, in the trial of the cause, Peter

M'Elcar against W. Elliot and others, No. 43, of May term, 1831, in the Supreme Court of Pennsylvania, whilst the same cause was in the circuit of Dauphin County, in which Court it appears, by the papers before me, was No. 7 of December, 1826. The depositions were read in evidence by the plaintiff, at the trial of the cause before his honor Judge Ross, one of the judges of the Supreme Court of Pennsylvania, holding a Circuit Court in and for the County of Dauphin, at the time the cause was tried, as stated in the record now before the Commissioner. I was of counsel for the plaintiff in the trial of that cause, and now state, that these depositions were read in evidence on the trial of that cause, as well from my own recollection, as from the notes of the late Samuel Douglas, Esq., who was concerned with me in the trial of the cause. The notes of Samuel Douglas, Esq., are now before the Commissioner, from which notes it appears that they were so read. Frederick Myers was examined in person in Court, the others were all read. I believe, also, that the same depositions were read by the plaintiff, in the Circuit Court for the Eastern District of Pennsylvania, in an action of ejectment, No. 11 of April Sessions, 1840, between the lessee of Isaac M. Fisher, a citizen of the State of Delaware, as plaintiff, and Richard Roe, a citizen of the State of Pennsylvania, with notice to John Carter and others, as defendants, in which action Jacob M. Haldeman, Esq., the present defendant, defended as landlord of the premises, and claimed the land in dispute. The deposition of Frederick Myers, to the best of my knowledge, was not read in evidence in the Circuit Court of the United States, in the trial of that cause.

Interrogatory 8th. Answered in Interrogatory 7th. I know from distinct recollection, that most of these depositions were read in evidence by the plaintiff, in the Circuit Court of the United States, in action No. 11 of April Sessions, 1840, before referred to, and I verily believe, they were all so read in evidence, except the deposition of Frederick Myers. I had the notes of Mr. Douglas with me at the trial in Philadelphia.

Interrogatory 9th. The land claimed by the plaintiff in the action No. 43, of May Term, 1831, in the Supreme Court of Pennsylvania, whilst the same was in the Circuit Court, the District Court, and the Court of Common Pleas, of Dauphin County, and afterwards in the Supreme Court, was the same island, called the Big Island, Baskins' Island, M'Elcar's Island, or Island No. 3, in the Susquehanna River, and now called Haldeman's Island, and the same island was claimed by the plaintiff, in the Circuit of the United States, in action No. 11 of April Term, 1840, referred to above.

Interrogatory 10th. Answered in the Interrogatory 9th.

Interrogatory 11th. The title under which the plaintiff in this bill in equity claims, is the same title, and no other, by virtue of which the plaintiff claimed, to recover this island in the aforesaid action,

No. 11 of April Sessions, 1840, and is the same title, under and by virtue of which, Peter M'Elcar claimed to recover the same Big Island, in No. 43 of May term, 1831, in the Supreme Court of Pennsylvania.

Interrogatory 12th. Deponent knows nothing, but by hearsay.

Interrogatory 13th. Deponent knows nothing but from hearsay.

Interrogatory 14th. For more than twenty-five years, amongst other things, in one way or another, I have been engaged in prosecuting this title for its several owners.

Interrogatory 15th. I live in Huntingdon, Pennsylvania, about 197 miles from Philadelphia.

Interrogatory 16th. I know nothing material.

Cross-examined by James M'Cormick, Esq., on the part of the defendant.

I have no interest in the event of this suit, legal or equitable; I have no bargain or agreement with the plaintiff whatever, in relation to this business; I had, at one time, an agreement with Peter M'Elcar, for a portion of the island; I think it was one-fourth, in case of a recovery. For certain reasons, the whole of which I could not now relate, Peter M'Elcar and myself rescinded that agreement. That was in the year 1823 or 1824, or thereabouts; about the time of the agreement of Peter M'Elcar, before mentioned, was rescinded, he made a new agreement with me to pay me in money; I think it was $5000 he was to pay me in the event of succeeding in recovering the island; I was only the counsel of Peter M'Elcar; Mr. Douglas assisted me in trying the cause; I have no agreement with Isaac M. Fisher, for the trial of this cause, in the Circuit Court of the United States. After the trial of the cause, in the Circuit Court of Dauphin County, I gave up that agreement with Peter M'Elcar, that is, after the judgment was affirmed in the Supreme Court of Pennsylvania; I gave it up on account of ill health, at least it passed out of my possession, and I do not know what became of it. Isaac M. Fisher is my nephew; is aged about 31 or 32 years; he was born in the year 1816. It was under my advice that Isaac M. Fisher became the purchaser of the title of Peter M'Elcar. The consideration is set forth in the deed, what was paid. I do not know. I know he paid him some; some money passed through my hands. I never received any compensation for my services, from Peter M'Elcar or Isaac M. Fisher, in the trials before mentioned; I paid my own expenses, and they have not been reimbursed. In a word, you may consider me the spirit of this cause. Although I have no pecuniary interest in the case, yet my feelings are as deeply interested as though I was prosecuting the case for myself. I considered the Supreme Court did me great injustice; I paid the cost in the Circuit Court myself, in the suit tried before Judge Baldwin. I

have a running account with Isaac M. Fisher, and expect he will account with me for it. Without a reference to Douglas's notes, I would not have undertaken to have sworn positively, that the depositions referred to were all read, but I had a distinct recollection of the depositions of Robert Armstrong, George Clark, William Baskins, John Diven, Samuel Campbell, and Barbara Herran; but I was not certain of the depositions of John Ayres, Rebecca Clark, and Kesiah Martin; but upon looking at Mr. Douglas's notes, and recollecting the circumstances, I am satisfied they were read in the Circuit Court of Dauphin County. I believe, also, that all the depositions named or read in the State Court, were also read in the Circuit Court of the United States.

ISAAC FISHER.

Sworn and subscribed.

C. A. SNYDER,
Commissioner.

At the same time and place, Robert Harris, Esq., aged near eighty-two years, being duly sworn according to law, doth depose and say, before the Revolutionary War, Wm. Mallay was married to my sister, and lived in Shamokin; and travelling up and down the river, I always stopped with Marcus Heuling, at the foot of the mountain, near where the present bridge stands; Heuling kept a tavern and a public ferry, and it was a public place; the road went up alongside of the river on this side, in sight of the Big Island; it was then called Baskins' Island, and M'Elcar's Island. William Mallay was a surveyor and agent for the proprietors, and laid out the town of Sunbury for them, and frequently travelled up and down the said road.

ROBERT HARRIS.

Sworn and subscribed,

C. A. SNYDER,
Commissioner.

At the same time personally appeared Benjamin A. Taylor, who being duly sworn according to law, doth depose and say: I knew the Big Island fifty years ago; I am aged about seventy-five years; was often on it. I do not think the island worth more than $15 per acre, in the year 1802, perhaps not that much. There were two small cabins on it then. I was young then and did not know much about the value of land. I think the Big Island is better land than the Little Island. I know them both. The Little Island lies in the junction of the Susquehanna and Juniata, and is known as Duncan's Island.

BENJAMIN A. TAYLOR.

Sworn and subscribed,

C. A. SNYDER,
Commissioner.

Pennsylvania, Dauphin County, *sct.*

I, Charles A. Snyder, Commissioner appointed by the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit, do certify, that in pursuance of the appointment, the foregoing depositions were given or taken before me at the time and place mentioned in the caption, and do certify that the documents produced and referred to in the said depositions, are identified by the initials C. A. S. written thereon, and accompanying these depositions, and are made a part of the same, and herewith inclosed in the same envelope, and directed to the Honorable Court under my hand and seal. I do further certify that the notes of the late Samuel Douglas, Esq., taken at the trial of the ejectment, M'Elcar against Elliot and others, in the Circuit Court of Dauphin County, and referred to in the depositions of Isaac Fisher, Esq., have also my initials, C. A. S., written on each page, and were given to Isaac Fisher, Esq.

I also certify that Robert Harris, Esq., and Benjamin A. Taylor reside in the Borough of Harrisburg, over one hundred miles from Philadelphia.

In testimony whereof I have hereto set my hand and seal at Harrisburg, the 5th day of June, Anno Domini 1850.

C. A. SNYDER, [SEAL.]
Commissioner.

I further certify that Jacob M. Haldeman and James M'Cormick, Esq., his counsel, attended during the taking of the foregoing depositions.

C. A. SNYDER, [SEAL.]
Commissioner.

In the Circuit Court of the United States, for the Eastern District of Pennsylvania. In Equity.

ISAAC M. FISHER, Esq., a Citizen of the State of Delaware,
v.
JACOB M. HALDEMAN, Esq., et al. Citizens of the State of Pennsylvania.
} No. 2 of October Session, 1848.

Interrogatories to be administered to Witnesses on the part of the Plaintiff.

Before Charles A. Snyder, Esq., of Harrisburg, a Commissioner duly appointed by the Court to take testimony on both sides in this case.

Interrogatory 1st. Do you know the parties, plaintiff and defendant, in this cause, or either of them?

Interrogatory 2d. Have you, or have you not, seen, and had in

your possession, a copy of the record of an action in the Supreme Court of Pennsylvania, Peter M'Elcar *v.* William Elliot, John Carter, John Holland, and Robt. Bower, appeal from the Circuit Court of Dauphin County? If yea, to whom did you deliver the copy of said record, at the time it passed from your hands?

Interrogatory 3d. Who was prothonotary of the Supreme Court of Pennsylvania for the Middle District on the 30th day of September, 1842, and who is now prothonotary of said Court?

Interrogatory 4th. Have you ever seen the several depositions mentioned on the last page of the aforesaid copy of the record of the Supreme Court, witnessed by you as prothonotary of said Supreme Court, at Harrisburg, September 30th, 1842, to wit, the depositions of George Clark, dated the 7th day of May, 1824; the first deposition of Robert Armstrong, dated the 12th day of March, 1824; the second deposition of Samuel Campbell, dated the 25th December, 1829; the deposition of Keziah Martin, dated January 8th, 1830, the deposition of Rebecca Clark, dated January 8th, 1830; the deposition of John Ayres, dated ; the deposition of Barbara Herran, dated 14th April, 1827; the deposition of Frederick Myers, dated January 8th, 1830; the first deposition of Samuel Campbell, dated the 14th of April, 1827; the second deposition of Robert Armstrong, dated January 2d, 1827, and the depositions of William Baskins and John Diven, dated the 21st of April, 1827? If yea, state where you saw them; in what condition you saw them; and if you found filed of record, in what court, and in what suit were they so filed?

Interrogatory 5th. Did you, or did you not, deliver the aforesaid depositions after withdrawing them from the records of the Supreme Court, under the order of the said Court, to some person? If yea, to whom did you deliver them?

Interrogatory 6th. Are, or are not, these several depositions now before you, purporting to be signed by George Clark, Robert Armstrong, Samuel Campbell, Keziah Martin, Rebecca Clark, John Ayres, Barbara Herran, Frederick Myers, William Baskins, and John Diven, the same depositions which you delivered to Isaac Fisher, as set forth in your answer to the fifth interrogatory?

Interrogatory 7th. Do you, or do you not, know that any, or if any, how many of the aforesaid depositions named in the 4th and 6th interrogatories, and now before C. A. Snyder, Esq., the commissioner, were read in evidence, on the part of the plaintiff, in the action, Peter M'Elcar against William Elliot and others, as described in the 2d interrogatory, and as set forth as laying in the copy of the record of the said action, No. 43, of May Term, 1831, in the Supreme Court of Pennsylvania, for the Middle District, whilst the said action was pending in the Circuit Court, for the County of Dauphin, Pennsylvania? If yea, state how many of said depositions were read in evidence, on the part of the plaintiff, in the said cause,

whilst it was yet pending in the Circuit Court, in and for the County of Dauphin, to the best of your knowledge, belief, and recollection; and state, further, upon what circumstances or evidence, your knowledge and belief are founded. Were the depositions, so read in evidence, the same depositions now before the commissioner?

Interrogatory 8th. Will you state, if you can with knowledge, whether the aforesaid depositions, named in the 4th interrogatory, or any of them; and if any, how many of them, were read in evidence, on the part of the plaintiff, in an action of ejectment, at the trial of the same action, being action No. 11 of April Sessions, 1840, in the Circuit Court of the United States, for the Eastern District of Pennsylvania, wherein John Doe, a citizen of the State of Delaware, lessee of Isaac M. Fisher, a citizen of the State of Delaware, was plaintiff, and Richard Roe, a citizen of the State of Pennsylvania, with notice to John Carter and others, were defendants; and were the depositions so read in evidence, on the part of the plaintiff, in the said Circuit Court of the United States, for the Eastern District of Pennsylvania, in action No. 11 of April Sessions, 1840, the same deposition now before the commissioner in this case, C. A. Snyder, Esq.?

Interrogatory 9th. Do you, or do you not, know what land was claimed by the plaintiff in the action of ejectment, No. 43, of May Term, 1831, in the Supreme Court of Pennsylvania, at the time the said action was commenced in the Court of Common Pleas of Dauphin County, and whilst the said action was pending *and whilst the said action was pending* in the Court of Common Pleas, in the District Court, in the Circuit Court, of Dauphin County, and afterwards in the Supreme Court of Pennsylvania? If yea, set forth particularly what land was claimed by the plaintiff in that action, and whether it was the same that was claimed by the plaintiff or complainant in this bill in equity.

Interrogatory 10th. Do you or do you not know what land was claimed by the plaintiff's lessor in the action No. 11, of April Sessions, 1840, in the Circuit of the United States, for the Eastern District of Pennsylvania, and whether, in that action, Isaac M. Fisher, or the nominal plaintiff, through said Fisher, did or did not claim to recover the same land now claimed by the said Isaac M. Fisher, against the defendant in this bill in equity?

Interrogatory 11th. Do you or do you not know under what title Isaac M. Fisher, or his lessor, through him, claimed to recover in the said action, No. 11, of April Sessions, 1840, in the Circuit Court of the United States, for the Eastern District of Pennsylvania, and whether he had derived the title, under which he claimed to recover in that action, from Peter M'Elcar, and whether it was the same title under which Peter M'Elcar sought to recover the same land which the plaintiff seeks to recover in this action, and whether the same title was in issue between Peter M'Elcar and Wm. Elliott and

others, in the action No. 43, of May Term, 1831, in the Supreme Court of Pennsylvania, at the trial of the said action in the Circuit Court of Dauphin County, and in the said Supreme Court, and whether the same title, derived from Peter M'Elcar to Isaac M. Fisher, was in issue in the Circuit Court of the United States, for the Eastern District of Pennsylvania, and whether the plaintiff, in that action, claimed under the same title which he derived from Peter M'Elcar, and whether the plaintiff, in this bill in equity, claims to recover the same land under the same title, that was in issue between the parties aforesaid, in action No. 11, of April Sessions, 1840, in the said Circuit Court of the United States, and was also in issue between the parties in No. 43 of May Term, 1831, in the Supreme Court of Pennsylvania?

Interrogatory 12th. Were you or were you not acquainted with the neighborhood of the mouth of the Juniata River, and the islands and shores of the Rivers Susquehanna and Juniata, thereabouts, before the Revolution, or more than seventy years ago?

If yea, state whether it was a public and notorious place much frequented by travellers, hunters, fishermen, or others, or not.

State also, if you know, whether any one could pass up or down the Susquehanna in daylight, by land or by water, without seeing Baskins' or Big Island.

Interrogatory 13th. Are you or are you not acquainted with the two islands lying near or at the mouth of the Juniata, in the Susquehanna River; the one being in the junction of the Rivers Juniata and Susquehanna, and called the Little Island, or Duncan's Island; the other lying in the Susquehanna River near the west side of the same, and at the mouth of the Juniata River, and now called the Big Island, or Haldeman's Island. If yea, how long have you known them?

Interrogatory 14th. What is and has been your occupation in life? What, in your opinion, was the value per acre of the land on those two islands, in the year 1802, and which of the two islands contains the best soil, and best quality of land?

Interrogatory 15th. Where do you live, and how far do you live from Philadelphia?

Interrogatory 16th. Do you know, or can you set forth any other matter or thing which may be of any advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in the cause. If yea, set forth the same fully and at large in your answer?

ISAAC FISHER,
Solicitor of Plaintiff.

The defendants will please to take notice that interrogatories, of which the above and foregoing are a true copy, will be administered to witnesses, to be produced and sworn on the part of the plaintiff,

before Charles A. Snyder, Esq., at his office, adjoining his dwelling-house, in the Borough of Harrisburg, on Wednesday, the 5th day of June, 1850, at 9 o'clock A.M. of said day. The said Charles A. Snyder, Esq., being a commissioner appointed by the said Circuit Court to take testimony on both sides of this cause.

ISAAC FISHER,
Solicitor of Plaintiff.

JACOB M. HALDEMAN, ESQ.
June 1st, 1850.

Copy delivered by me to Mr. Haldeman, in person, at his own house, Saturday, June 1st, 1850.

ISAAC FISHER.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, sitting in Equity.

ISAAC M. FISHER, ESQ.,
A Citizen of the State of Delaware, Complainant,
v.
JACOB M. HALDEMAN, ESQ.,
A Citizen of the State of Pennsylvania, and others,
Citizens of said State, Defendants.

In Equity.

The defendants will please take notice that I have been appointed by the aforesaid Circuit Court, a commissioner, to take depositions and other testimony, in said cause, on the part of the plaintiff, and that I shall proceed to take the said testimony, to wit, the depositions of P. C. Sedgwick, and others, at my office, in the Borough of Harrisburg, on Wednesday, the 5th day of June, 1850, between the hours of 8 o'clock A.M. and 8 o'clock P.M., of said day, commencing at or before 9 o'clock A.M.

C. A. SNYDER,
Commissioner.
ISAAC FISHER,
Solicitor of Complainant.

May 25th, 1850.

A true copy of the within paper and notice, signed by me, delivered to Jacob M. Haldeman, Esq., in person, at his own house, by myself, on the 25th day of June, 1850.

ISAAC FISHER.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFAR, JOHN HOLLAND, and ROBERT BOWER.

No. 191.
Dec. 3d, 1822.

In the District Court of Dauphin County, of May Term, 1823.

Plaintiff in this suit enters a rule to take the depositions of aged, infirm, and going witnesses, to be read at the trial, de bene esse, ex parte, on ten days' notice. The justice of the peace, or other officer, before whom the depositions shall be taken, shall note in the same, whether both or only one of the parties attended at taking the same. Certified from the record.

OBED. FAHNESTOCK,
Prothonotary.

Feb. 28th, 1824.

To Wm. Elliott, John Coufar, John Holland, Robert Bower, and Thomas Duncan, Esq'rs, defendants in the above-stated cause, or George Fisher, or Thomas Elder, Esq'rs, their attorneys.

Gentlemen: Please to take notice, that in pursuance of the above rule of court, the depositions of witnesses, to be read in evidence on the trial of this cause, will be taken before Andrew Denniston, Esq. (or some other Justice of the Peace, of Mercer County, Pennsylvania), at his office, in Slippery Rock Township, in said county, on Friday, the 7th day of May next, between the hours of 10 o'clock A.M., and 4 o'clock P.M., of said day, when and where you may attend, to cross-examine the witnesses, if you think proper.

S. DOUGLASS,
J. FISHER,
Attorneys for Plaintiff.

Harrisburg, February 28th, 1824.

In pursuance of the above rule, personally appeared before me, the subscriber, a Justice of the Peace of Dauphin County, at the place mentioned in the above rule, and between the hours mentioned therein, Robert Armstrong, who being duly sworn according to law, doth depose and say, that he was born on the sixteenth day of January, one thousand seven hundred and forty. To the best of my recollection, I was ten years old, it was in the year fifty, when I became acquainted with Francis Baskins' Island, at the mouth of Juniata. He went on up the river with his mother, and asked her who lived on the island; she told me it was Baskins; that Baskins lived at the point of the island, and George Clark about the middle, or rather towards the Susquehanna side. As we passed along by the island, I saw Joseph Thornton's improvement. I asked my mother who lived there; she said, that is Thornton's, Joseph Thornton; this was on the upper point of the island. He recollects of no other person living on the island at that time. He says that Francis Baskins' house was a cabin, with a clapboard roof; his improvement not very large. George Clark had a good house with a pretty improvement. The peach trees were in blossom. Joseph Thornton had a cabin; but, as the upper point of the island was not all cleared out, could not see the improvement very well; he saw his fence. Says that they, Francis Baskins, Clark, Thornton, lived on the island until the

year A. D. 1755, at the time of Braddock's defeat, when they were driven from the island by the Indians. Says he went away at that time, and did not return until A.D. 1760. Says in the year 1760, when he returned back, Francis Baskins and Alexander Steen, his son-in-law, were living at John Carson's Brick house, below Fort Hunter. George Clark then lived in a cabin, near Parson Elder's, in Paxton. That same fall, in the year 1760, they, F. Baskins, Steen, and Clark, went up to the island, and made some improvements on the island; repaired up their houses; and in the spring of the year 1761, Francis Baskins, Alexander Steen, his son-in-law, and George Clark, moved their families back on the island again. He says that Alexander Steen went on the west side of the island, next the branch, and there made his improvement opposite to George Clark. He says he then did not go back on the island until 1766, but was fifty times on it before that. When he went back to the island in 1766, Patrick M'Elcar was living on Joseph Thornton's place; and that Patrick M'Elcar lived there until he died. He says that in April, 1766, Michael Herran, son-in-law of Patrick M'Elcar, was living about halfway between George Clark and Steen's place, and the middle of the island.

Deponent further says, Alexander Steen sold his improvement to John Melon, and John Melon, and says John Melon, he believes, sold to Boyd. He says that John Melon went into possession after Alexander Steen, and lived there several years. Says that Boyd went in possession after Melon; but don't know how long he, Boyd, lived there; and that John Deven came into possession after Boyd. He says he is informed that John Deven moved, and is now living in the State of New York, about seven miles from Tioga. Michael Paxton lived along with Joseph Thornton; they still kept together. Says that Paxton was a single man, and was killed by the Indians at the Battle of Mahanoy. Patrick M'Elcar purchased Joseph Thornton's improvement, and was then in possession of it in the year 1766, when I went on the island to raft logs. Young George Clark went into possession after his father died. Baskins had two sons. Francis Baskins left his improvements to his two sons, William and George; they were to pay their sisters their portion. William had the upper place, where his father died, and George the lower. William paid his sisters off. That these original settlers returned back on the island after they were driven off by Indians, as soon as danger would admit them, and rather too soon. Francis Baskins and George Clark both lived on the island until their deaths. Francis Baskins, George Clark, Alexander Steen, Patrick M'Elcar, possessed all the island; and I never heard any other person claim any part of it. James Baskins, the brother of Francis, had a claim, but no improvement, which he sold to Patrick M'Elcar, before 1766, and M'Elcar went into possession of it. One of the daughters of Francis Baskins was married to John Deven, and the other went away, and

I never heard of her since. After the Revolution, when George Baskins went to the Western country, Cornelius Atkinson moved into the house where George Baskins owned. After his father's death, William Baskins lived in his father's old house on the island, until Mr. Duncan bought. Does not know what year Baskins moved away, but it was after 1800, he moved away and gave Mr. Duncan possession; and Duncan put in Pother, the stage-driver. Two of the M'Elcars moved away with Baskins; I think Thomas was one; I don't know which of the others. Battle of Mahanoy was in the fall after Braddock's defeat.

Reserving the right of objecting to the legality, admissibility, and competency of the evidence, the attorneys for defendants ask the following questions:

1st. Were you present when Alexander Steen sold to John Melon?

Answer. No. Steen moved and settled at the mouth of Juniata, and afterward moved to the State of Georgia.

2d. Were you present when John Melon sold to Boyd?

Answer. No.

3d. How long did Boyd live on the island?

Answer. Don't know.

4th How did Deven get possession, get into possession after Boyd left it?

Answer. Don't know how, whether he purchased or not; saw Deven in Boyd's house.

5th. How do you know that Francis Baskins left his improvements to his sons George and William?

Answer. Knows it in no other way, than what William, the son, told me.

6th. How do you know that William and George Baskins were to pay their sisters out of their improvement?

Answer. That Clark, the son-in-law, pushed George Baskins, and that William, the brother, told him he had to borrow part of the money to pay it. Never saw any of the money paid.

7th. How do you know that James Baskins sold to Patrick M'Elcar?

Answer. Patrick told him so.

8th. Has Mr. Duncan had an uninterrupted possession, ever since William Baskins surrendered the possession to him?

Answer. Never knew or heard anything to the contrary, until the M'Elcars brought their suit.

9th. Did the two M'Elcars that moved off the island with William Baskins, deliver up their possessions to Mr. Duncan?

Answer. I cannot tell. I was not present. They all moved off together.

Sworn and subscribed, at Middle Paxton Township, at the house

of James Armstrong between the hours of 10 o'clock A. M., and 4 o'clock P. M., this 12th day of March, in the year of our Lord, A.D. 1824, before me, William Ayres, Justice of the Peace for Dauphin County.

ROBERT ARMSTRONG,
his ⋈ mark.

Plaintiff and defendant's attorneys attending, and present.

C. A. S.

Second Deposition of Robert Armstrong.

Dauphin County, *ss.*

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COWPER, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 191.

And now, to wit, on the 27th day of November, 1826, rule to take depositions, on the part of the plaintiff, ex parte, on ten days' notice. The Justice of the Peace, or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state on the deposition the hour when the same was taken, and also whether any person attended to cross-examine the deponent. Certified from the record, the 27th day of November, 1826.

For OBED. FAHNESTOCK,
Prothonotary.
C. A. SNYDER.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT et al. } No. 191.

Rule entered on the part of plaintiff to take depositions, &c.

Sir,—Please to take notice, that in pursuance of the rule of court, entered and taken out on behalf of the plaintiff in this case, last November, the depositions of Robert Armstrong and others, to be read in evidence on the trial of the cause, on the part of the plaintiff, will be taken at the house of Thomas Armstrong, in Danville, Columbia County, before William Wilson, Esq., or some other Justice of the Peace of said county, on Tuesday, the 2d day of January

next, between the hours of 10 o'clock in the forenoon, and 3 o'clock in the afternoon of said day, when and where you may attend, and cross-examine the deponents, if you think proper.

S. DOUGLASS,
Attorney for Plaintiff.

To THOS. DUNCAN, Esq., defendant in interest, or THOMAS ELDER, Esq., his attorney in the above-stated cause.

December 20th, 1826.

The above rule and notice served on Thos. Elder, Esq., attorney for defendant, December 20th, 1826, by leaving with him a true copy of them by me.

S. DOUGLAS.

Columbia County:

Before the subscriber, a Justice of the Peace in and for said County, on the 2d day of January, 1827, the above named Robert Armstrong appeared, and, on his solemn oath, saith, he is well acquainted with the property in dispute this fifty years, or since he was twelve years old. He was born in the year 1740. James and Francis Baskins were the first settlers on the island in dispute, which was in the name of Baskins' Island since he can recollect. Michael Paxton settled on the upper end of the island shortly after Baskins had settled; don't recollect of any other settlers. As soon as the Indians left the island, these settlers settled there. He knew George Clark, and his son George. Francis Baskins was married to a daughter of old George Clark, and took old Clark home, and settled him on the island with him. Francis Baskins settled on the lower part, and Clark above. Do not know a man of the name of Thornton. As soon as the purchase was made from the Indians, these men made their settlement on the island. He was well acquainted with Peter M'Elcar. Thinks that Peter M'Elcar's father's name was Patrick, and lived on the island, and Peter was born there. Patrick M'Elcar settled on the island many years after the purchase from the Indians. Saw Baskins, Francis and James, move on the island, when I was about ten years of age. It was well known from the year fifty-two, that Baskins had settled on the island, and so I said in my last deposition. I am sure of that. All the river settlers knew that Baskins claimed the island, and were the first that ever settled there. I stated all I knew in my former deposition.

Defendant's counsel, protesting against the legality of the above deposition, the authority to take it, reserving all objections, as well to the matters deposed as to the competency of the witness, cross-examine in behalf of defendants.

Francis, James, Thomas, and William Baskins were brothers. Francis had a son named William, a young boy. Mr. Duncan got

possession about the time of General Wayne's expedition. William Baskins moved away about the time Duncan got possession. He was married to a cousin of my wife. I don't know that any other Baskins moved away after Duncan bought; then Baskins moved, and gave possession to Duncan. Duncan then put Pother, the stage-driver, into possession. Some of the M'Elcars, two of them, moved away William Baskins. I can't tell exactly my age, at the time of the Indian purchase, but think I was eleven or twelve. When I first saw the improvement on the island, Francis Baskins had a very good one, and a good house, and great deal of clear land, and some peach trees. I eat some of the peaches that summer, and saw the trees, which was thicker than my arm. Francis Baskins rented out his house, at the lower end of the island, and built higher up, and had a good common fence round his fields. The first time I saw the improvements on the upper end of the island was when I crossed with my mother; the lower, I had seen some time before. I knew the lower end since I knew anything. The time I crossed with my mother was in the fall of the year. I was then ten or eleven years of age. At that time Francis Baskins had several fields cleared. When I saw it first, the fields had been cleared some years; the house had been up some years. I had lived about three miles off before I went over the island the first time. Can't tell how long Baskins had lived there before he moved his father-in-law, Clark, there. I was born the 16th of January, 1740. When I first saw Clark's improvement, he had a large house, which appeared to have been made some years before. Clark had an orchard of apples and peaches, both bearing fruit. Wm. Baskins never moved back since he moved away to Tioga, in New York State. Deven moved about the same time that Wm. Baskins moved. When I first saw the Big Island, Wm. Baskins lived on the island, at the mouth of Juniata, now in possession of widow Duncan. When Wm. Baskins first settled, one Ellis married Baskins' widow, and resided there; next John Smith, and Joseph Martin, who married Baskins' daughter, lived there. Next after them came John Musser, who bought from them. Colburn then lived there after Musser got it. It was not the house that Francis Baskins first lived in, that Wm. Baskins lived in when he gave possession to Thomas Duncan. When the possession was given to Duncan, George Clark, Jr., lived in the house that his father George built him, the same house. James Baskins made no improvement that I know of. James sold his share of the island to Thornton, but I was not by at the time, and Thornton sold to Patrick M'Elcar, but I was not by. I knew it only from hearsay. Certainly there was grain raised in the field. When I first saw them, Clark's chimney was a wooden one. Before I saw Clark's improvement many years, Wm. Baskins had been setlted on the island, now in possession of Mrs. Duncan. William and Francis settled both in one year. I know that Baskins were settled on the island some years before I was on it. Wm. Baskins

was killed by the Indians, before I was on the island, in the year of 1755. I was born within on three miles of the island. I can't tell what season of the year I first saw the island. It was many years after Francis Baskins settled, that Thornton came. I was on the island before Thornton came. Can't tell whether it was the same house that Thornton lived in which M'Elcar lived in when Duncan got possession. Don't know the year of the purchase from Indians. Think I was about 7 or 8 years old then.

Plaintiff's counsel, reserving to themselves the right of making all legal objections to the matter contained in the cross-examination of the witness, put the following questions:

Question 1. Were Clark and Baskins' improvement made before or after the purchase from the Indians, and before or after the Indians left the island?

Answer. That year the Indians left the island, the Baskins took possession; this was after the purchase was made.

Question 2. What year was it that you first eat peaches on the island?

Answer. In the year 1760.

Question 3. How do you know that Baskins gave up possession to Duncan; was it of your own knowledge or hearsay?

Answer. I was not present, and don't know it of my own knowledge.

Question 4. What did you mean by saying in your first deposition that Mr. Duncan had bought the island? do you know of your own knowledge that he did buy, or only by hearsay?

Defendants' counsel object to the question.

Answer. It was only by hearsay.

Question by defendants' counsel. Have you ever said or deposed that you were about ten years of age when you were first on the island, and that Baskins, Clark, and Thornton then had lived on it, and had valuable improvements?

Answer. I never said so.

What time of the year, and in what year did Baskins first settle?

Answer. Can't tell what time, whether spring or fall.

Q. What time of the year did the Indians go off?

Answer. I can't tell.

Q. What age were you when Baskins first settled?

Answer. I can't tell; was but young.

Q. When you were first on the island with your mother, did you or not see peach trees in blossom, or large improvements?

Answer. I was not on the island with my mother. I passed the point when I was ten years old, and saw the smoke coming out of Thornton's chimney, Thornton's house.

Q. Had Thornton any fields cleared and fenced there?

Answer. I saw the fences and the cabin in the fall of the year.

Q. Do you know if Thomas Duncan has had possession ever since Wm. Baskins gave it up to him?

Answer. He has had his tenants there since, or until I came away last April.

Question by plaintiff. How do you know Wm. Baskins gave up possession to Thos. Duncan?

Answer. I don't know it of my own knowledge, my wife was there.

his
ROBERT ⋈ ARMSTRONG.
mark.

Taken and subscribed this 2d day of January, 1827, in the presence of A. Jordon, who attended on the part of the plaintiff, and H. Bell, Esq., on the part of defendants. Deposition commenced between 10 and 3 o'clock, and finished after 3, the cross-examination being protracted beyond that time.

WM. WILSON.

Depositions of William Baskins and John Divens, April 21st, 1827.

Ejectment in the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WM. ELLIOT, JOHN HOLLAND, JOHN COWPER, ROBT. BOWER, and THOS. DUNCAN, ESQ.

The defendants in this suit will please to take notice that the depositions of witnesses, to be read in evidence on the trial of this cause, on the usual terms, will be taken before some competent authority, at the office of Robt. Robison, Esq., in Lewistown, Mifflin County, on the 14th day of April, 1827, between the hours of 6 o'clock in the forenoon, and 8 o'clock P. M., of the said day, at which place and time Barbara Herran and others will be examined. The defendants will also take notice, that the depositions of Catharine M'Elcar and others will be taken, on the same terms, and for the same purpose, before some competent authority, at the house of the postmaster, in the town of Athens, in the County of Bradford, on the 21st day of April, 1827, between the hours of 12 M., and 3 o'clock P. M. of the said day, at which times and places the defendants can attend and cross-examine the witnesses, if they think proper.

PETER M'ELCAR.

LEWISTOWN, March 29, 1827.

Original copy sent by mail to Judge Duncan, March 31, to Messrs. Fisher and Elder, do. do.

John M'Elcar, being sworn, says he served a true copy of this

paper on Wm. Elliott, on the 3d day of April, 1827, by delivering it to his wife at his own house.

JOHN M'ELCAR.

Before me, one of the Justices of the Peace of Mifflin County,
DAVID MILLIKEN.

Dauphin County, Sct. In the Circuit Court of Dauphin County, of December Term, 1827.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COWPER, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 72.

And now, to wit, on the 23d day of March, 1827. Rule to take depositions on the part of the plaintiff ex parte, on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken, in pursuance of the above rule of Court, is required to state on the deposition, the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record, the 23d day of March, 1827.
OBED. FAHNESTOCK,
Clerk.

In the Circuit Court of Dauphin County. Rule to take Depositions ex parte, on ten days' notice.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN HOLLAND, JOHN COWPER, ROBERT BOWER, and THOMAS DUNCAN, ESQ.

And now, to wit, April 21st, 1827, a copy of the rule being produced on the part of the plaintiff, personally came before me, the subscriber, one of the Justices of the Peace in and for the County of Bradford, and State of Pennsylvania, at the house of Ebenezer Backus, the postmaster in and for the town of Athens, in the County of Bradford, William Baskins and John Diven, who being sworn and examined according to law, say,—the said witnesses being produced and sworn, at the place aforesaid; I, the said Justice and the agent of the plaintiffs, attending, from the hours of 12 M. to 3 o'clock P. M. of the said day, and the examination of the witnesses being kept open until 3 o'clock P. M.

NOAH MURRAY,
Just. Peace.

The following questions were put to William Baskins.

Q. 1. How old are you.

Ans. Sixty-four.

Q. 2. Where was you born, and how long have you known the Big Island in the Susquehanna River, near the mouth of the Juniata? on and about what year did you first see the island?

Ans. I was born where Harrisburg now is, in Pennsylvania; I have known above from my earliest recollection.

Q. 3. Who lived on that island and owned it when you first knew it? Tell what part each of the owners lived on.

Ans. Francis Baskins, Alex. Stephens, George Clark, Thomas M'Coy, and Jos. Thornton. Francis Baskins owned the lower part; Alex. Stephens on the west part; George Clark on the east of Stephens; Thomas M'Coy towards the head of the island on the east part; and Joseph Thornton on the head of the island.

Q. 4. Did you ever see Joseph Thornton? where did he live, and what year did he leave said island?

Ans. I knew him well; he lived as above stated; cannot recollect the time he left.

Q. 5. To whom did Joseph Thornton sell his improvement?

Ans. I think to Patrick M'Elcar.

Q. 6. Did you know Patrick M'Elcar? did he live on the Big Island? how long did he live there? did he live on the same place which Joseph Thornton built?

Ans. I knew him well; he lived on the Big Island; cannot recollect the number of years he resided there; but he lived over twenty years; he lived on the same place where Joseph Thornton built.

Q. 7. Did you know old George Clark? where did he live? about what year did he die? who were his children? who got his land on the island after his death?

Ans. I knew old George Clark well; he lived on the island; cannot recollect the time of his decease; George Clark, son of the above-named George Clark, Jane, Susan, and Eleanor, the four children of said George Clark, inherited the estate above alluded to.

Q. 8. Did you know young George Clark, the son of old George Clark? where did he live? how many years did he live there?

Ans. I was well acquainted with him; he lived on the island; cannot recollect the number of years he resided there, but from my early recollection he lived there.

Q. 9. Did you know old Francis Baskins? where did he live? about what year did he die? who got his land after his decease? did John Divens and you ever own any part of the island? how did you get it? did you and John Divens own and possess all the land which belonged to Francis Baskins in his lifetime?

Ans. Francis Baskins was my father; he lived and died on the Big Island; he died when I was in the fourteenth year of my age;

I inherited the property, together with John Divens, my brother-in-law, that Francis Baskins owned during his life on said island.

Q. 10. Did you know Thomas M'Coy? where did he live? did he own any part of the Big Island? how much of the said island did he own? how did he get it? who bought M'Coy's part of the island? what time did M'Coy sell his part of the Big Island? did Patrick M'Elcar go into possession of the land he bought from M'Coy? who lived on that piece of land at the time Patrick M'Elcar bought it of M'Coy? what part of the island did M'Coy own?

Ans. I was well acquainted with Thomas M'Coy; he lived towards the head of the island, as before stated; cannot recollect the number of acres he possessed on said island; don't know who he purchased from; Patrick M'Elcar purchased of M'Coy; can't say what time he sold to M'Elcar; but went into immediate possession of the premises; think that M'Coy lived at said land at the time he sold to M'Elcar.

Q. 11. Did you know Issaac Jones? where did he live? did he own any part of the island? how much did he own? how did he get it? who purchased Isaac Jones's part of the island? about what year did he sell it? did the purchaser go into possession of the land which Isaac Jones sold?

Ans. I was acquainted with Isaac Jones; he did not live on the island; he owned a small piece of land on the island; cannot say how many acres; Patrick M'Elcar bought Jones's right to said island; cannot say what year the purchase was made; M'Elcar went into immediate possession of the premises.

Q. 12. Did you know Alexander Stephens? where did he live? did he own any part of the Big Island? how much did he own? what part of the island did he live on? what did Stephens do with his land?

Ans. I knew Alex. Stephens; he lived on the island on the west part; cannot say what number of acres he owned; cannot say who Stephens sold to.

Q. 13. Did you know John Mellon? where did he live? did he own any part of the Big Island? how much did he own? what part did he live on? what did Mellon do with his land?

Ans. I knew John Mellon; he lived on the Stephens farm on the island; he owned the said farm; he lived on the west part of the island. Mellon sold, but cannot say to whom.

Q. 14. Did you know Robt. Boyd? where did he live? did he own any part of the island? where did he die? who was the executor of Robert Boyd? did the executor of Robert Boyd ever sell his land on the said island? who bought it? did the persons who purchased of Boyd's executor go into possession of it and hold it as his own? in or about what year did Boyd's executor sell this land?

Ans. I knew Robert Boyd? he lived on the island and died there. William Cook was his executor; believe said Cook sold the land belonging to the said Boyd to Patrick M'Elcar; the said M'Elcar

entered immediately upon the premises; cannot recollect the year M'Elcar purchased of Boyd's executors.

Q. 15. Did you ever know or understand that the Penns or any other person under them, claimed this island as their property before Mr. Duncan set up his claim to it? do you know that Joseph Thornton, Patrick M'Elcar, Francis Baskins, George Clark, Alex. Stephens, Thomas M'Coy, or any of the persons who claimed under them, ever paid rent for this island to any one before Mr. Duncan set up his claim to it?

Ans. I never heard of any claim from the Penns, or any other person under them, to the said island, previous to the pretended claim of Mr. Duncan. I never knew that either of the persons named in the last interrogatory ever paid rent to any one before Mr. Duncan set up his claim to it.

Q. 16. What part of the island belonged to Patrick M'Elcar in his lifetime? how much to Francis Baskins? how much to George Clark; and how much to Boyd?

Ans. I know nothing about the proportion owned by the above-named persons on said island.

Q. 17. In what year did the M'Elcars, George Clark, John Divens, and yourself, leave the island, and give it up to Mr. Duncan? What sum of money did Mr. Duncan give you, and each of the other owners of the island, when he warned you off? by what means did Mr. Duncan get you and the other owners of the island to give it up? did he ever use any threatening language to you, or any other of the settlers?

Ans. We all left it in the year 1802, or about that time; cannot say what Mr. Duncan paid the other settlers, but think he paid me twenty shillings per acre, for my part, as a present, and if I would not accept of these terms, he would send the marshal and turn me out of possession, without paying me anything.

Q. 18. Did you ever give Mr. Duncan a deed for your part of the island?

Ans. I signed some kind of an instrument, but know not whether a deed or otherwise.

Q. 19. What kind of improvements were on the island when you first knew it? how much cleared land was then on it? how many farms? what kind of houses, orchards, &c.?

Ans. There were six farms; the number of acres of cleared land on it I cannot tell; there were a number of houses made of logs, and perhaps three or four small orchards.

The defendants, by their agent, first protesting against the competency of the witnesses, the relevancy and admissibility of the evidence offered, and having objected to all and the several questions put by the plaintiff as leading ones, put to Wm. Baskins the following questions:

1st. When was the survey made for the Penns and Thos. Duncan, by Col. Alexander?

Ans. Some time in the year 1800 or 1801, according to the best of my recollection.

2d. Did not you, George Clark, and all the M'Elcars, residing on the island, attend when this survey was made, and was it not made without disturbance or opposition?

Ans. I was on the island when the survey was made, saw them surveying, but was not with them during all the time; don't recollect whether George Clark was present; some of the M'Elcars were, but don't recollect whether all were; thinks John Diven made some objections to the surveying, round that part owned by me and the said John Diven; don't recollect that any other opposition was made to the survey.

3d. How long after the survey was it that you, George Clark, and John Diven, came to an agreement to release your possession and possessory rights to Thos. Duncan?

Ans. I cannot recollect of our ever coming to such an agreement, but left the premises in 1802.

4th. What were the terms of the agreement made by you, or by you and Geo. Clark and John Diven, with Thos. Duncan, relative to your giving up the possession or your possessory rights to the island? state them particularly; were they not that each of you should continue to live on the island without rent, until 1802, 1st April, and then surrender up the possession to Thos. Duncan, he paying you twenty shillings per acre, and was it not a written agreement to that effect, executed by you all, and deposited by consent in the hands of Thos. Hulings, Esq., your friend?

Ans. I have no recollection of any agreement entered into with Thos. Duncan, relative to giving up to him possession or selling him my right to the island, and have no recollection of any agreement being deposited with Thos. Hulings, Esq.

Q. 5. Did you not apply to Thos. Duncan, and state to him, that you must look out or had looked out for land in the new countries to remove your families to, when you left the island; and that, as you supposed, advancing the money, before it was to be paid by the agreement, could make little difference to him, it would be a great obligation on you to receive it, to enable you to complete your purchase?

Ans. I did not.

Q. 6. Did not the said Thos. Duncan agree to advance you the whole purchase-money before it was due; and did he not appoint a time in the summer of 1801 for you all to come over and receive your money; and did you not go over, and each of you receive, at his office, from him, twenty shillings per acre for your respective possessions?

Ans. I did not know that there was any time that it was due,

neither did I receive it as a compensation for my possessory right on the island, but received it as a gift. I received twenty shillings per acre of Mr. Duncan at his office in Carlisle, but whether in the year 1801 or 1802, I cannot recollect. George Clark and John Diven received their money, at the same rate per acre, at the same time.

Q. 7. Did you not request Thos. Duncan to pay you in silver, as you were to go into a country where bank notes would not pass; and did not Thomas Duncan accommodate you by paying you in hard money instead of bank bills; and did all of you then execute a quit-claim to Thos. Duncan; and did not Thos. Duncan furnish you with small bags to carry your silver?

Ans. I requested to have it in silver, and did receive such; but never told Mr. Duncan where I intended to lay it out; he paid Geo. Clark and John Diven in silver money, at the same time; we then signed some writing, but do not know what it was; cannot recollect as to the bags spoken of.

Q. 8. Why did you execute the writing spoken of in your last answer, and for what purpose was it executed?

Ans. Because we were threatened to be turned off by the marshal, in case we did not relinquish our possessions on the island.

Q. 9. Was the writing, signed by you and the others at that time, intended as a conveyance of your rights on the island?

Ans. I cannot say it was.

Q. 10. What was that writing, or what was the purport of it?

Ans. I cannot tell.

Q. 11. Did you not sell your fall crop, put in 1801, to Thos. Duncan, and did you not receive payment from his agent for the same, in 1802?

Ans. I did.

Q. 12. Who came into possession under Thos. Duncan, after you gave up the possession of the part you had; and when did you remove from the island?

Ans. I cannot recollect the person's name; he was a German. I removed from the island in 1802.

Q. 13. Did you ever afterwards make known to Thomas Duncan, until you brought your ejectment, any pretence you had to any part of the island?

Ans. I did not.

Q. 14. When were you first applied to, and by whom, to bring your ejectment; what part of the land to be recovered was to be yours; and what part, the person or persons by whom the suit was to be carried on?

Ans. I cannot recollect when I was first spoken to bring an ejectment for any part of the island; Peter M'Elcar, the plaintiff, was the first who spoke about it; cannot recollect in what year; I expected that if it was recovered to get part, but what part I do not know.

Q. 15. Was Peter M'Elcar to carry on the suit? if not, who was to carry it on? and what part, or what compensation, was such person to have for carrying on the suit?

Ans. I expect he was to carry on the suit; I have no recollection of any agreement made with him what part I was to have.

Q. 16. Was the application made to you to bring your ejectment in person or by letter? If by letter, please to annex it to your deposition?

Ans. I believe the application was made personally by M'Elcar; I have no recollection of receiving any letter for that purpose from him.

Q. 17. How came it that the ejectment was discontinued?

Ans. I cannot say; I never knew that it was discontinued.

Q. 18. Have you sold or conveyed to Peter M'Elcar, the plaintiff, any claim you had, and when did you sell? what was the consideration-money? was it paid in hand, or any part of it, and how much, and by whom? if not paid in hand, what security have you for it? any mortgage on the land, any bond, or other agreement? and if any, by whom executed? produce them, and annex them to your deposition.

Ans. I have conveyed to Peter M'Elcar all my claim to the said island; I cannot tell what year I made the conveyance; I cannot say what the consideration-money was; if he recovered I was to get part of it; he did not pay me any money. As to whether he gave me any note, bond, or mortgage, I don't know; I cannot say whether he gave me any written security or other written agreement.

Q. 19. If plaintiff should fail in this ejectment, do you expect to recover anything, and does your receipt of any consideration depend on his succeeding in the cause? What part of the land are you to get if the plaintiff recovers, or if not land, what consideration-money?

Ans. If the plaintiff, Peter M'Elcar, fails to recover in this suit, I do not expect to recover anything from him; there is no agreement between us what part of the land I shall have in case he should recover.

Q. 20. The money you received from Thomas Duncan for your share of the island, how much was it, and did you not vest it in land immediately?

Ans. I cannot recollect the sum paid me by Mr. Duncan; cannot recollect how I laid it out.

Q. 21. Did you not, after your agreement with Thomas Duncan, request him to have your house repaired, or to pay you for repairing it, as the rain beat in, so that it destroyed your goods and injured your family?

Ans. No; I have no recollection of any such thing.

WM. BASKINS.

Sworn and subscribed, before me, agreeably to the certificate above annexed, at the time and place above stated.

NOAH MURRAY,
Justice of the Peace.

John Diven, having been sworn in pursuance of the annexed rule, at the time and place above stated, and the same interrogatories being put to him, on the part of the plaintiff, as to Wm. Baskins, to the first interrogatory deponent answers: Sixty-nine years.

2d. In Lancaster County, Penna. It is fifty years since I knew the Big Island.

3d Ans. I cannot name but three, Francis Baskins, George Clark, and Patrick M'Elcar.

4th Ans. I know nothing.

5th Interrogatory. Ans. I know nothing.

6th Interrogatory. Ans. I know Patrick M'Elcar; he lived on the Big Island; cannot recollect the number of years he lived there.

7th Interrogatory. Ans. I know nothing.

8th Interrogatory. Ans. I knew young George Clark; he lived on the island; cannot recollect the number of years he lived there.

9th Interrogatory. Ans. I knew Francis Baskins; he lived on the east side of the island; cannot recollect the year he died; I inherited part of his property in right of my wife.

10th Interrogatory. Ans. I know nothing about it.

11th Interrogatory. Ans. I know nothing about it.

12th Interrogatory. Ans. I know nothing about it.

13th Interrogatory. Ans. I knew John Mellon; he lived on the west side of the Big Island; to the residue of the interrogatory, he knows nothing.

14th Interrogatory. Ans. I knew Robert Boyd; he lived on the east side of the island; cannot say what he did with his possession; he died on the island; as to the residue of the interrogatory he knows nothing.

15th Interrrogatory. Ans. I know nothing about it.

16th Ans. Patrick M'Elcar owned the upper part of the said island; George Clark owned on the east side, and in the middle of the island; Francis Baskins the lower end of said Island.

17th Ans. We all left the island in the year 1802. Cannot recollect the amount paid by Mr. Duncan; but it was at the rate of twenty shillings per acre; I accepted his offer as a present and not as a sale of my possessions; he having frequently threatened that, unless we complied with his offer, he would turn us off and give us nothing.

18th Ans. I signed an instrument of writing when he paid me the money at twenty shillings per acre, but what it was I am unable to say.

19th Ans. There were five or six farms under some improvement, a number of log buildings, and some orchards.

The defendants, by their agent, first protesting against the competency of the witness, the relevancy and admissibility of the evidence, and having objected to the several interrogatories put as leading ones, puts the following interrogatories to John Diven, the witness:

1st Interrogatory. When was the survey made by Col. Alexander for the Penns and Thomas Duncan?

Answer. I think it was in the year 1800 or 1801. I saw them surveying on McElcar's land, but did not see them surveying anywhere else on the island as I recollect.

Question. Did not William Baskins, George Clark, and all the M'Elcars residing on the island, attend when the survey was made, and was it not made without disturbance or opposition?

Answer. There were some of them present, but cannot recollect which, except Jacob M'Elcar; recollect he was present; the survey was made without disturbance or opposition as far as I know.

3d Interrogatory. How long after the survey was it that you, George Clark, and William Baskins came to an agreement to release your possessions and possessory rights to Thomas Duncan?

Answer. I cannot recollect of having ever entered into such agreement with Thomas Duncan. I gave possession to Mathias Flam, who purchased my grain on the ground at the same time I signed an instrument of writing, the purport of which I knew nothing of at the time.

4th Interrogatory. What were the terms of that agreement? State them particularly. Were they not that each of you should continue to live on the island without rent until 1802, 1st of April, and then surrender up the possession to Thomas Duncan, he paying you twenty shillings per acre; and was it not a written agreement to that effect, executed by you all, and deposited in the hands of Thos. Hulings, your friend?

Answer. I do not recollect any such agreement, or of making any written agreement which was deposited in the hands of Thomas Hulings, Esq.; we came to an agreement with Mr. Duncan, previous to receiving the money from him, but how long before cannot tell; the terms of the agreement were, we were to take twenty shillings per acre; but don't recollect any set time when he was to pay it. Mr. Duncan said it was a present to us, as the land was already his; don't recollect that I ever agreed to give up possession to him; but being unable to contend with Mr. Duncan in the law, he being a lawyer, I thought best to comply with his offer.

5th Interrogatory. The same as the 5th cross-interrogatory put to Wm. Baskins.

Answer. Does not recollect so applying to Mr. Duncan, or any such conversation.

6th Interrogatory. The same as the 6th cross-interrogatory put to Wm. Baskins.

Answer. There was no agreement, according to my recollection, when he was to pay the money. I went over to his office in Carlisle in 1801, according to the best of my knowledge, with George Clark and Wm. Baskins, and received of Mr. Duncan twenty shillings per acre, according to our respective possessions.

Interrogatory 7th. The same as the 7th cross-interrogatory put to William Baskins.

Answer. I do not recollect that I requested Thos. Duncan to pay in silver. I received some hard money of him, but whether all or how much cannot say; we, Wm. Baskins, Geo. Clark, and myself, then signed an instrument of writing, but whether a quit-claim, a receipt, or what it was I cannot say. Don't recollect Mr. Duncan furnishing any bags to carry our silver in.

8th Interrogatory. What did Thos. Duncan give you the twenty shillings per acre for, if you were not to give up possession to him? what was you to do for him or relinquish *or relinquish* to him for the twenty shillings per acre given you?

Ans. He gave it to us as a present, as he still said the land belonged to him, and unless we would quit our possessions he would turn us off without giving us anything. I cannot recollect what we were to do for him or relinquish to him, except what was contained in the instrument of writing before mentioned, and what that was cannot recollect.

9th Interrogatory. Who came into possession under Thomas Duncan after you gave up the possession of the part you had; and when did you remove from the island?

Answer. I cannot say who came into possession under Thomas Duncan. I gave possession to Mathias Flam. I removed from the island in 1802, in May, 1802.

10th Interrogatory. Did you ever afterwards make known to Thomas Duncan, until you brought your ejectment, any pretence you had to any part of the island?

Answer. I never did.

11th Interrogatory. When were you first applied to and by whom to bring your ejectment; what part of the land to be recovered was to be yours, and what part the person or persons by whom the suit was to be carried on?

Answer. According to the best of my recollection, Peter M'Elcar, the plaintiff, applied to me to bring an ejectment. I never expected to recover anything for myself; but if I recovered in the suit, I expected my children to have my part. Peter M'Elcar was to carry on the suit; but cannot say he was to have any part for carrying on the suit, except his own share.

Interrogatory 13th. Was it an application in person or by letter? If by letter, please to annex it to your deposition?

Answer. The application was made personally, and not by letter.

Interrogatory 14th. How came it that the ejectment was discontinued?

Answer. I did not know that it was discontinued.

Interrogatory 15th. Did you not know that an ejectment had been commenced for the island, or some part of it, in which you was one of the plaintiffs?

Answer. I did not know it; I never was a plaintiff in the suit.

Interrogatory 16th. Have you sold or conveyed to Peter M'Elcar, the plaintiff, any claim you had, and when did you sell? What was the consideration-money? was it paid in hand, or any part of it, and how much, and by whom? If not paid in hand, what security have you for it? any mortgage on the land, bond, or other agreement? and if any, by whom executed? Produce them, and annex them to your deposition.

Answer. I gave to Peter M'Elcar some writing, but cannot recollect what kind of instrument it was; cannot tell whether a power of attorney, or conveyance. I cannot tell how many years ago I gave him the writing; he did not pay me anything; he did not give me any security for it, bond, or other agreement.

Interrogatory 17th. If plaintiff should fail in this ejectment, do you expect to recover anything? and does your receipt of any consideration depend upon his succeeding in the cause? and what part of the land are you to get if plaintiff recovers? or, if not land, what consideration-money?

Answer. If the plaintiff should fail to recover, I do not expect to recover anything; and if the plaintiff recovers in this suit, I do not expect to recover anything in land, or money, or anything else.

Interrogatory 18th. In your answer to the eleventh cross-interrogatory, you say, if anything is recovered in this suit, it is for the benefit of your children. How came your children by their interest in this claim; and when did they acquire their interests?

Answer. It was by my first wife I came by the possession, that was the reason of my giving it to her children; it is some time ago that I gave it to them, but cannot recollect the time. I never gave them any deed or conveyance.

Interrogatory 19th. At whose expense is this suit carried on? and how are the counsel employed by the plaintiff to be paid?

Answer. I do not know.

Interrogatory 20th. Who are interested in prosecuting this suit besides Peter M'Elcar?

Answer. I do not know who are, except my children.

Interrogatory 21st. The money you received from Thos. Duncan for your share of the island, how much was it? and did you not vest it in land immediately?

Answer. I cannot tell how much money I received from Thos. Duncan; some time after, I vested some of it, cannot say how much, in land.

Interrogatory 22d. Had you, or the other persons you have named as settlers on the island, any other title except possession?

Answer. Not that I know of.

JOHN DIVEN.

Sworn and subscribed before me agreeably to the certificate above annexed, at the time and place above stated.

NOAH MURRAY,
Justice of the Peace.

Dauphin County, *sct.*

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFER, JOHN HOLLAND, ROBT. BOWER, and THOS. DUNCAN, Esq. } No. 191.

And now, to wit, on the 27th day of November, 1826, rule to take depositions on the part of the plaintiff ex parte on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken in pursuance of the above rule of court, is required to state on the deposition the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record the 27th day of November, 1826.

For OBED. FAHNESTOCK,
Prothonotary.

C. A. SNYDER.

Sir,—Please to take notice, that in pursuance of the rule entered in this case, the deposition of witnesses, to be read in evidence on behalf of the plaintiff on the trial of the cause, will be taken at the house of Thomas Armstrong, in Selinsgrove, Union County, before Joseph Fehrer, Esq., or some other Justice of the Peace, of said county, on Friday, the fifteenth day of December next, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of said day, when and where you may attend and cross-examine the deponents if you think proper.

S. DOUGLASS,
Attorney for Plaintiff.

Thomas Duncan, Esq., defendant in interest, or Thomas Elder, Esq., his attorney.

November 29th, 1826.

Dauphin County.

Before the subscriber, a Justice of the Peace in and for Dauphin County, personally came S. Douglass, who being duly sworn, says, that he served the foregoing rule and notice on Thomas Elder, Esq., attorney for defendants, who had previously agreed to accept notice of the same, this twenty-ninth day of November, eighteen hundred and twenty-six, by leaving with him a true copy thereof.

S. DOUGLASS.

Sworn and subscribed before me, November 29th, 1826.

WM. AYRES.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN CRAWFORD, JOHN HOLLAND, and ROBERT BOWER, and THOMAS DUNCAN, Co-Defendant. } No. 191.

Ejectment, May 24, 1824, on motion of Mr. Douglass, rule to take the deposition of John Ayres, on Wednesday next, at 2 o'clock, at his residence. Notice at the Bar.

The Justice of the Peace or other officer before whom the deposition is taken, is required to state on the same the time the deposition was taken, and whether any person attended to cross-examine the deponent.

Certified from the record, May 25th, 1824.

For OBED. FAHNESTOCK,
Prothonotary.

C. A. SNYDER.

Dauphin County.

In pursuance of the above rule of court, personally appeared before me, the subscriber, a Justice of the Peace in and for the said county, John Ayres, at the house of the said John Ayres, who being duly sworn according to law, doth depose and say: that he is upwards of seventy-three years of age. That he has resided in that part of Dauphin County, now called Middle Paxton township, ever since the year 1773, which is fifty-one years. That he has during the whole of that period known an island in the river Susquehanna, being the Big Island, at the mouth of the river Juniata, usually called Baskins' or M'Elcar's Island. That when he came to reside in Dauphin County, Patrick M'Elcar and his family, widow Baskins, George Clark, and Diven lived on the said island. That George Clark had a good house; the houses of the others were but indifferent; they were such as were common in those times; the cleared land on the island appeared to be well cultivated. The said persons or their representatives continued to re-

side on the said island, and, as this deponent always understood, claimed the right to their several parts of the said island, until the disturbance arose from Mr. Duncan's putting them off. That about the close of the Revolutionary war, when Dauphin County was yet a part of the County of Lancaster, he, this deponent, was a collector of taxes. That the tax which this deponent then collected was a heavy one, and payable by the people in three instalments. That the persons above named then lived on the said island; and each one claimed the part on which he lived as his own, and paid the tax assessed upon the same to this deponent. That he, this deponent, has made diligent search for his duplicate, and has not been able to find the same; and further saith not.

JOHN AYRES.

Sworn and subscribed at the time and place mentioned in the foregoing rule. No person attending on the part of the defendants to cross-examine the witness.

JOHN C. M'ALLISTER, Esq.

Deposition of George Clark.

In the District Court of Dauphin County, of May Term, 1823.

PETER MCELCAR
v.
WILLIAM ELLIOT, JOHN CRAUFAR, JOHN WALLAM, ROBERT BOWER. } No. 191.

December 3d, 1822. Plaintiff in this suit enters a rule to take the depositions of aged, infirm, and going witnesses, to be read at the trial de bene ex parte, on ten days' notice.

The Justice of the Peace or other officer before whom the depositions shall be taken, shall note in the same whether both or only one of the parties attended at taking the same.

Certified from the record, February 28, 1824.

OBED. FAHNESTOCK,
Prothonotary.

To William Elliot, John Craufar, John Holland, Robert Bower, and Thomas Duncan, Esq., defendants in the above-stated cause, or George Fisher and Thomas Elder, Esqrs., their attorneys.

Gentlemen,—Please to take notice, that in pursuance of the above rule of court, the deposition of witnesses to be read in evidence on the trial of this cause, will be taken before Andrew Denniston, Esq., or some other Justice of the Peace of Mercer County, Pennsylvania, at his office in Slippery Rock township, in said County, on Friday, the seventh day of May next, between the hours of ten o'clock

A.M. and four o'clock P.M. of the said day, when and where you can attend to cross-examine the witnesses if you think proper.

S. DOUGLAS,
J. FISHER,
Attorneys for Plaintiff.

HARRISBURG, February 28, 1824.

Dauphin County.

S. Douglas being duly sworn, says that he served the foregoing rule of court and notice on Thomas Elder, Esq., one of the counsel for the defendants, on this 20th day of April, 1824; and at the same time left with him a true copy of them.

S. DOUGLAS.

Sworn and subscribed, April 21, 1824, before

A. HOLBROOK.

April 21st, 1824, Mr. Elder this day agreed that it was not necessary to serve this rule on any of the defendants who live on the island.

S. DOUGLAS.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN CROWFAR, JOHN HOLLAND, and ROBERT BOWEN. } No. 191.

December 3d, 1822, plaintiff in this suit enters a rule to take the depositions of aged, infirm, and going witnesses, to be read in evidence at the trial, de bene esse ex parte, on ten days' notice.

In obedience to the above rule of court, a copy of which under the seal of the court is produced before me, personally appeared before me, one of the Justices of the Peace in and for the County of Mercer, George Clark, who being sworn, says: that he knows the plaintiff, but knows nothing of the defendants; and that he has known the plaintiff twenty years. I am seventy-five years of age last April; I live in Springfield Township, Mercer County, State of Pennsylvania; ten years past I lived in Slippery Rock Township, in said county; I lived on the Big Island, so called, in the River Susquehanna, or M'Elcar's Island; I lived on said island thirty-five years; I owned 155 acres of land, about the middle of said island; I have been on the island before I was five years old. Francis Baskins, Neal M'Laughlin, James Macky, lived on the island; my father purchased from Neal M'Laughlin in the year 1749. The island was settled 6 years before Braddock's defeat. I knew Thornton, but know nothing of Paxton, but know nothing when Thornton settled there, but, in the year 1762, he had a small cabin, and about 3 acres cleared, and, from the time I knew him on the island, he made it his residence for him and his family until he sold it to

Patrick M'Elcar, but in what year he sold, I cannot recollect. M'Elcar put a fall crop in Thornton's land that fall, after he purchased, and the next spring after moved his family on to it, and lived on it, and occupied it as his own until his death. I never knew that Thornton or M'Elcar ever paid any rent for that part of the island, or that any were demanded of them, for they never acknowledged any other proprietors than themselves, as I know of. I am a son of old George Clark, who settled on said island; my father died in the year 1767; he moved on to the island in the year 1755; he had a snug cabin, and six or seven acres of clear land, before he was driven off the island by the Indians, the time of Braddock's War, and, as soon as the danger was over, he returned, and in the same year was driven off again by the Indians, and returned again, and owned and possessed the same land he settled first, without molestation, until he died there: then I came into possession by my father's death, and held possession of the same, until dispossessed by Thomas Duncan. Old Francis Baskins lived on the lower end of the island; he was one of the first settlers, together with Neal M'Laughlin and James Macky. Baskins made it his residence for him and his family from he settled until drove off by the Indians. At that time he had a small house with a shingle roof, six or seven acres cleared, and some fruit trees planted; this improvement he had at the commencement of Braddock's War. He returned to his improvement as soon as the danger was thought to be over. Said Baskins continued to live on the lower end of the island, and held it as his own until his death.

I cannot tell what year he died. William Baskin and George Baskin, his sons, and John Diven, his son-in-law, came into possession after the old man's death; and they held it as their own until they were driven off by Mr. Duncan. Alexander Steen lived on the back branch of the island. Steen sold to Josiah Rutter, Rutter sold to Mellon, and Mellon sold to Robert Boyd, then Boyd's executors sold to M'Elcars, shortly before Duncan dispossessed them. M'Coy lived on the Big River side; was said to hold 25 acres of land, and sold it to old Patrick M'Elcar. None of the Penns, nor any person for or in their name, nor by their authority, did ever claim or possess any part of said island, nor claim any part-owners from the time of the first white settlements was made, that I ever heard or knew of, until Mr. Duncan got possession of the island, some time in the year 1799. I and Diven and Baskin went to Carlisle, to Mr. Duncan; he told us he had not got the full power out of Mr. Physic's hand, the former agent for the Penns, but when he would get the full power, he would let us know. Being very uneasy, some short time after, we went to Mr. Duncan again; he told us that he had not got the power yet from Mr. Physic; he told us that Mr. Physic would be sorry to let the power out of his hands if it would be any loss to any of us three; he further stated that he had got the deed for

M'Elcar's part, and added, that they were an ornery set; that I, Devins, and Baskins, would be better without them as neighbors; and that he had got Daniel M'Elcar under a lease of two years. Some time after, Mr. Duncan came to Mr. Ellis, at the mouth of Juniata River, and sent a line to me, Devin, and Baskin. Baskin and Devin went on to meet him, and I followed after. He told them he had got the island for services he had rendered to the Penns, and he would not part with it; but he would give us three twenty shillings per acre for what land we held, and them that would not take that he would send for the Marshal on them, and turn them out of possession, and give them nothing. From the threats of Mr. Duncan, as an able man, and we, Baskin, Devin, and myself, being of low circumstances, we were induced to a compliance with Duncan, and received the 20 shillings per acre, for fear that we would be brought into a lawsuit, and spend our personal property, and our families suffer by being overpowered by might. I heard that William M'Lea surveyed in the island about the year 1760; there was no person living on the island at that time of survey. George Clark, my father, Thornton, Steen, and Francis Baskin held the whole of the island by virtue of their improvement and settlement. Duncan paid me, Baskin, and Devin, before we left the island. I am so infirm that I would not venture to take a journey of twenty miles from home. After arriving at mature age, being present on the island at almost every transfer, that I thought I heard every circumstance that took place, I always heard that the first improvement took place in the fall of 1749. Cabins were built, and they moved into them the next spring.

Question by Mr. Elder, agent for plaintiff.

1. What time did Thornton return to his improvement, at the head of the island, after Braddock's War?

Answer. I cannot recollect the time; but I am sure he returned as soon as there was any safety in so doing.

2. Was it not at the time your father and old Baskin returned?

Answer. Baskin returned to the island the same time Thornton did; but my father was some time after, before he returned.

GEORGE CLARK.

Sworn and subscribed before me, this 7th day of May, 1824, betwixt the hours of 10 A. M. o'clock, 4 o'clock P. M.

ANDREW DENNISTON.

[L. S.] Mercer County, *ss.*

Before me, the subscriber, a Justice of the Peace in and for said County, personally came the above-named George Clark, betwixt the hours of 10 o'clock A. M. and 4 o'clock P. M. of the 7th day of May, 1824, at my office, in Slippery Rock Township, county aforesaid, and continued in my office from the aforesaid 10 o'clock until

4 o'clock. William Elder appeared agent for plaintiff; no person appearing for defendants. I do certify the above to be just and true. Witness my hand and seal the 7th day of May, 1824.

ANDREW DENNISTON.

Deposition of Barbara Herran, and first deposition of Samuel Campbell.

Dauphin County, *sct.*

In the Circuit Court of Dauphin County of December Term, 1826.

PETER MCELCAR
v.
WILLIAM ELLIOT, JOHN CROFAR, JOHN HOLLAND, ROBERT BOWER, and THOS. DUNCAN, Esq. } No. 72.

And now, to wit, on the 23d day of March, 1827, rule to take depositions on the part of the plaintiff ex parte on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state on the deposition, the hour when the same was taken; and also whether any person attended to cross-examine the deponent.

Certified from the record the 23d day of March, 1827.

OBED. FAHNESTOCK,
Clerk.

Ejectment, in the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN HOLLAND, JOHN CRAUFAR, ROBERT BOWER, and THOS. DUNCAN, Esq.

The defendants in this suit will please to take notice, that the depositions of witnesses, to be read in evidence on the trial of this cause, on the usual terms, will be taken before some competent authority, at the office of Robert Robison, Esq., in Lewistown, Mifflin County, on the 14th day of April, 1827, between the hours of six o'clock in the forenoon and eight o'clock P.M., of the said day, at which time and place Barbara Herran and others will be examined.

The defendants will also take notice, that the depositions of Catharine M'Elcar and others will be taken, on the same terms and for the same purpose, before some competent authority, at the house of the postmaster, in the town of Athens, in the County of Bradford, on the 21st day of April, 1827, between the hours of 12 M. and 3 o'clock P.M. of the said day, at which times and places the

defendants can attend, and cross-examine the witnesses if they think proper.

Lewistown, March 29, 1827.

John M'Elcar being sworn, says he served a true copy of the above notices on William Elliot, one of the defendants, on the 3d day of April, 1827, by delivering it to his wife, at his own house.

JOHN M'ELCAR.

Before me, a Justice of the Peace of Mifflin County.

In the Circuit Court of Dauphin County of December Term, 1826.

Peter M'Elcar
v.
William Elliot, John Cowfar, John Holland, Robert Bower, and Thomas Duncan, Esq. } No. 72.

Mifflin County, *ss.*

And now, 14th day of April, 1827, agreeably to a rule issued out of the Circuit Court of Dauphin County, for taking depositions, to be read in evidence on the trial of this cause, before Robert Robison, Esq., a Justice of the Peace, in and for the said County of Mifflin, at his office in Lewistown, John Boden and Abraham S. Wilson, Esqs., attending on part of the defendants, and plaintiff and his counsel, Mr. Fisher, attending personally, appeared Samuel Campbell, who being duly sworn according to law, doth depose and say: That he is now in the sixty-eighth year of his age. That he was born in Chester County, Pennsylvania. That he has known the Great Island in the Susquehanna River, near the mouth of the Juniata, since the year 1781. That Patrick M'Elcar at that time lived on the head of the island. That William Baskins at the same time lived on the Point farm. That George Clark lived on the second farm from the Point. That Michael Herran lived on the river side, between George Clark and Patrick M'Elcar at that time. That Robert Boyd also lived on the island at that time, on the branch side; he joined places with Herran; that he has seen Boyd, and been at his house; that said Boyd died four or five years after deponent first knew the island; and that his widow lived on the island after his death; that Mr. Cook acted as the executor of Boyd. That the land on which Herran lived was claimed by Patrick M'Elcar; and said Herran was the son-in-law of Patrick M'Elcar. Deponent further says, that Patrick M'Elcar died on the island aforesaid, after the death of Patrick M'Elcar; that his sons, Daniel, Martin and Jacob, lived on the island; and that Peter M'Elcar, the above plaintiff, when at home, also lived on the island. Deponent cannot tell

the time Peter M'Elcar removed to the State of New York. Patrick M'Elcar had a box of a house with a clapboard roof, a barn, and a snug little orchard, on the island, at the time he first knew it, and forty or fifty of acres of cleared land. The fences were tolerably good; and the farm in as good condition as any farms round about.

That Herran's house stood 60 or 80 rods from the banks of the river, and one of his fields extended out to the river. Geo. Clark had a small house with a cabin roof upon it, in the year 1781; also a barn and a few apple-trees, and some of them 13 or 14 inches over the stump; some of the apple-trees were old and some young; fences were tolerably good; about 40 acres of cleared land; the farm, in comparison with other farms round about, was in good condition. Baskin, in the year 1781, lived in a snug box of a house, with a shingle roof; had a shingle-roofed double barn, some apple-trees, fences tolerably good, and between 40 and 50 acres of cleared land, probably. Baskin's farm and improvements were as good as any about there. Boyd's at that time was a tolerably snug little place. About 30 or 40 acres cleared, a tolerably snug little box of a house, with a shingle-roof, the barn not much, a stable on it; it is so long ago he cannot recollect it. Boyd's place was in a tolerably good fencing, tolerably well farmed, according to the style of farming at that time. Herran's was a tolerable snug little place, a tolerable snug box of a house, one end of a barn, and a threshing-floor, with a stable; about 20 acres of cleared land; the fences were tolerably good. Deponent has not been on the island for 6 or 7 years. He does not know how much land any of the persons who lived on the island claimed. In the year 1802, deponent lived in Buffalo Township, now Perry County; that from the year 1781 to 1802, there was a good deal of land cleared on the island, and new houses built. Patrick M'Elcar had a new house built; and Geo. Clark built a new house. Devin built a new house after the year 1781, and before 1802, back on the branch. He cannot say what quantity of land was cleared between 1781 and 1802. He was at a grubbing-frolic at Patrick M'Elcar's once, when they grubbed 8 or 10 acres. I am no relation to either of the parties, nor in any manner interested in the event of it.

A. S. Wilson, Esq., defendant's agent, objects to the testimony of the above witness, and parts thereof. Reserves the right of objecting to the same on the part of the defendants on the trial of this cause, on the ground that it is inadmissible, and puts the following questions:

1st. Do you know how long any of the persons you mentioned as residing on the island in 1781 continued to reside there after that time, viz.: Geo. Clark, Baskin, Diven, and Herran?

Answer. They all lived on the island till after Patrick M'Elcar's death, but how long thereafter he does not know.

2d. Where did you live from the year 1781 till 1802?

Answer. About 7 or 8 years on the other side of the river, partly opposite the island, and from that time up till 1822 on this side of the Big River, between that and the Juniata, about 3 miles from the Big Island.

Question by plaintiff's attorney. Where do you live now?

Answer. About 7 miles from Lewistown, out in Decatur Township.

Question by plaintiff's agent, Mr. Wilson. Who came into possession, or who were the tenants of the house occupied by Patrick M'Elcar, after his family left it?

Answer. I cannot say who occupied it after that time.

Question by same. Did Peter M'Elcar live on the island after his father's death, and did he reside with his father's family?

Answer. He, Peter, was a good deal from home. What time he lived with them, or what time he was away, he cannot tell.

SAML. CAMPBELL.

Sworn and subscribed, at 7 o'clock P. M., before the subscriber, a Justice of the Peace as aforesaid, at my office in Lewistown, 14th April, 1827.

ROBT. ROBISON.

Barbara Herran, another witness, produced and sworn at the same time and place, in the same cause, doth depose and say, that she is a niece of the plaintiff, Peter M'Elcar, and lives about 3 miles above Waynesburg, in Mifflin County. Deponent was born on the Big Island, in the Susquehanna, near the mouth of the Juniata River; her father's name was Michael Herran; she is now in the 46th year of her age; at the time she first knew the island her grandfather, Patrick M'Elcar, lived on the head of the island. George Clark, at the same time, lived down on the river below her grandfather; her father's place came in adjoining the river; her father lived about 80 rods from the bank of the river; Wm. Baskins lived below my father; Mr. Diven lived on the branch. Robert Boyd lived on the island at the first of her recollection, but died shortly after.

Question by plaintiff's attorney. At the time of your first recollection, who were the persons who claimed, and held the possession of the whole of the Big Island?

Answer. Patrick M'Elcar, my grandfather, George Clark, my father, Michael Herran, Wm. Baskins, John Diven, and Robert Boyd.

Question 2d, by same. Were they in possession of, and did they claim the whole of the island?

Answer. Yes.

Question 3d, by same. Who came into possession of your grandfather's land, after his death?

Answer. His sons, viz., Thomas, George, Daniel, Peter, Martin, and Jacob lived there.

Question 4th, by same. Who came into possession of Boyd's land, after his death?

Answer. William Cook.

Question 5th, by same. Who came into possession of Boyd's place, next after Cook?

Answer. Peter M'Elcar, and Daniel M'Elcar.

Question 6th, by same. Do you know how they got the possession of Cook?

Answer. They bought it.

Question 7th. Do you know what they gave Cook for it?

Answer. I don't recollect just now what they gave him.

Question 8th. Do you know if they had a deed from Cook for that land?

Answer. They had. I have seen the deed and read it.

Q. 9th. Do you know how much land was conveyed by that deed?

Answer. 180 or 190 acres.

Q. 10th. Do you know what became of that deed?

Ans. Uncle Daniel M'Elcar had it the last time I saw it.

Q. 11th. How long was it before your Uncle Daniel went away from the island that you saw the deed?

Ans. About 8 days.

Q. 12th. Where did your Uncle Daniel go to, when he went away from the island?

Ans. To the State of New York, as she understood.

Q. 13th. How long did Peter M'Elcar live on the island after his father's death?

Ans. I suppose for 2 or 3 years, he was off and on there by times.

Q. 14th. Had Peter M'Elcar ever any tenants on that island?

Ans. Yes.

Q. 15th. Who were those tenants?

Ans. Martin M'Elcar, and Daniel M'Elcar.

Q. 16th. Do you know if they had any lease from Peter M'Elcar?

Ans. Yes. I have seen it, and was a witness to it.

Q. 17th. Do you know how many years that lease was for?

Ans. It was for 3 years.

Q. 18th. Do you recollect the date of the lease?

Ans. I don't recollect the date of it.

Q. 19th. Do you know how long it was, before Daniel and Martin left the island, that they took the lease from Peter M'Elcar?

Ans. 3 years.

Q. 20th. Do you know if the term of the lease had expired, when they went away?

Ans. Yes. It expired that spring.

Q. 21st. Do you know what land it was they leased of Peter M'Elcar?

Ans. Yes. It was the upper part of the island, viz., my grandfather's possessions, and no more. Daniel alone leased Boyd's place.

Q. 22d. Can you tell what became of that lease?

Ans. I cannot.

Q. 23d. When did you see it last?

Ans. I last saw it in the possession of my uncle, Peter M'Elcar, the year he went to the lakes.

Q. 24th. Did you live on that island at the time Judge Duncan got possession of it?

Ans. Yes.

Q. 25th. Will you tell by what means he got possession of it, as far as you know?

Ans. He let on that he was an agent of Mr. Penn.

Q. 26th. Did you ever hear any conversation between Mr. Duncan and the M'Elcars, and the others that lived on the island?

Ans. Yes. After he got possession, he threatened that he would put the law in force against them.

Q. 27th. Where were they living at the time he threatened that he would put the law in force against them?

Ans. They lived up on the old place, at the head of the island.

Q. 28th. Will you explain how it was that Judge Duncan was in possession, whilst they, M'Elcars, lived upon the old place, at the head of the island?

Ans. I was at my uncle's when Mr. Duncan came there; and Duncan said they were honest men, and they would not cheat him out of his ears of corn and shad. I don't know anything further, only that he never would allow them anything for their right. I heard the bargain about the ears of corn and shad between Mr. Duncan and uncles Daniel and Martin. Duncan came first and foremost, and told them he was an agent of Penn; and heard him, Duncan, say so. He then came afterwards, and said he had bought of Penn, and threatened that he would put them off by the law. Duncan said they must come under a lease; they agreed by word of mouth, there were no writings between them. M'Elcars were to give three ears of corn and one shad per year for rent.

Q. 29th. Do you know how Judge Duncan got M'Elcars off the island finally?

Ans. I cannot tell.

Q. 30th. Did you ever hear any conversation between Judge Duncan, Diven, and Baskin?

Ans. I never did.

Defendant's agent objects to the testimony of this witness, and the questions put by plaintiff's attorney; and reserves the right, on the part of the defendant, of objecting to the same, on the trial of this cause, and particular parts thereof, both on account of the incompetency of the witness, the inadmissibility of the testimony, and the

manner of putting the questions; and puts the following questions to the witness:

Question 1st, on part of the defendant. Have you now, or have you ever had, any claim to any part of this island?

Ans. I have not now, nor never had.

2d. When did you see the deed, spoken of in your deposition, from Cook to M'Elcars?

Ans. About eight days before Daniel M'Elcar left the island.

3d. How do you fix the date of three years, before Daniel M'Elcar left the island, of the lease being entered into between Peter M'Elcar, and Daniel and Martin M'Elcar?

Ans. I don't recollect by anything; I never took any account of dates.

4th. How do you know Judge Duncan never would allow M'Elcars anything for their right to the island?

Ans. I heard Judge Duncan himself say so.

5th. At what time was the verbal lease, you speak of, between Duncan and M'Elcars?

Ans. I don't recollect the year, but know it was in the spring.

6th. When did Thomas M'Elcar live on the island; and what time did he get possession?

Ans. He lived where my father lived, between Baskins and Clark; and got possession in the spring of the year; I don't know what year.

7th. What time did you leave the island?

Ans. I think it is 26 years this spring.

8th. Was Martin Miller a tenant of Mr. Duncan's on the island before you left it?

Ans. Yes, he was there one year before I left it?

9th. Was Peter M'Elcar much at the island after his father's death?

Ans. No, not very much.

10th. Don't you know that your uncles (M'Elcars) lived on the island as Mr. Duncan's tenants before you left it.

Ans. No; nothing further than under the lease by word of mouth, none of them.

11th. How old were you when you recollect the matters of which you speak in the early part of your deposition.

Ans. 4 or 5 years of age; at that age I could recollect things better than I can now.

Question by plaintiff's attorney. Which was made first, the lease from Peter to Daniel and Martin, or the verbal lease from Judge Duncan to Daniel and Martin?

Ans. The lease from Peter to Daniel and Martin was made first.

2d. How long did you stay on the island after Daniel and Martin, and all of the others, Baskin, Devin, &c., went away from it?

Ans. One year.

3d. How much land did your grandfather claim and hold at the head of the island?

Ans. I can't tell how much.

4th. Who owned the land that your father lived on; did it belong to him or your grandfather?

Ans. My grandfather put him on it. I heard my father and mother say so.

BARBARA HERRAN.

Sworn and subscribed, at 8 o'clock P.M., in the presence of Mr. Boden and Mr. Wilson, defendant's agent, plaintiff, and his counsel, 11th April, 1827.

ROBT. ROBISON.

Second deposition of Saml. Campbell.

In the Circuit Court of Dauphin County of December Term, 1826.

PETER M'ELCAR
v.
WM. ELLIOT, JOHN CROUFAR, JOHN HOLLAND, ROBT. BOWER, and STEPHEN DUNCAN, Esqrs. } No. 7.

In pursuance of the rule hereto annexed, came before me, one of the Judges of the Court of Common Pleas in and for Mifflin County, on the twenty-fifth day of December, 1829, at the office of Isaac Fisher, in the Borough of Lewistown, Samuel Campbell, a witness on the part of the plaintiff, the defendant attending in person, and Stephen Duncan on the part of the defendants. The said Samuel, being sworn and examined according to law, says:

That he is in the seventy-second year of his age. I have known the island called the Great Island since the year 1780; I know that Peter M'Elcar lived on that island then and after. Peter M'Elcar left the island in 1798. Daniel M'Elcar and Martin M'Elcar remained on the upper part of the island where Peter M'Elcar formerly lived; after the said Peter left the same, Daniel M'Elcar and Martin M'Elcar both told me, in 1798, that they lived on the island under a lease from Peter M'Elcar.

Note. Mr. Duncan objects to this question and answer.

I live in Derry Township, Mifflin County, between 40 and 50 miles from Harrisburg. It was before Daniel M'Elcar and Martin M'Elcar became the tenants of Thomas Duncan, Esq., deceased, that they told me that they occupied the island under a lease from Peter M'Elcar, and after the said Peter M'Elcar had left the island. I knew one David Dechert who lived on said island; that the said David Dechert told me that he occupied the said island under Daniel M'Elcar. This conversation was the summer after Peter M'Elcar left the said island.

Mr. Duncan, reserving the right of making all legal objections to

the matters certified in the foregoing deposition, puts the following questions:

In 1780 when I first visited the island, I lived in Paxton Township, Dauphin County, about ten miles from the river. I remained there about five years; I then moved into Cumberland County, now Perry, then Greenwood and Buffalo Townships, and resided there until the spring of 1822. I recollect the year that Peter M'Elcar left the island, from Mr. Huling having built his house in 1794, and from my term of residence in other places; I think it was three years, was the term of the lease between Peter M'Elcar and Daniel and Martin M'Elcar, and that I understood that it was in writing. I think it was about two years after Peter M'Elcar went to New York that I saw him; he came down the river. I was back and forward in the island two or three times a year, perhaps more, and saw Daniel and Martin M'Elcar there, after they had become the tenants of the said Thomas Duncan, Esq. I was examined in this case before, at which time my deposition was taken. Many of the questions now asked were not then asked of me; there was no questions put as to the lease. And further saith not.

SAMUEL CAMPBELL.

Sworn and subscribed, this 25th day of December, A. D. 1829, in the presence of the plaintiff, and of Stephen Duncan, Esq., on the part of defendants, before

DAVID REYNOLDS,
Associate Judge of the Court of Common Pleas of Mifflin County.

Dauphin County, *sct.*

In the Circuit Court of Dauphin County, of December Term, A.D. 1826.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN CROUFAR, JOHN HOLLAND, ROBERT BOWER, and STEPHEN DUNCAN. } No. 7.

And now, to wit, on the 23d day of March, 1827, rule to take depositions on the part of the plaintiff, ex parte, on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state on the deposition the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record, the 8th day of December, A.D. 1829.

OBED. FAHNESTOCK,
Clerk.

To William Elliot, John Cowfar, John Holland, Robert Bower, and Stephen Duncan, Esq., defendants in the above cause, or Thomas Elder and George Fisher, Esq., their attorneys.

Gentlemen,—Please to take notice, that in pursuance of the above rule of court, the depositions of Jane Wilson, and others, witnesses on behalf of the plaintiff, will be taken at the office of Isaac Fisher, Esq., attorney-at-law, in Lewistown, Mifflin County, before William M'Coy, or some other Justice of the Peace of said County, on Friday the twenty-fifth day of December, eighteen hundred and twenty-nine, betwixt the hours of 12 o'clock at noon, and 8 o'clock in the afternoon of said day. And also, the depositions of witnesses, on behalf of said plaintiff, will be taken at the house of William Reed, in Halifax Township, Dauphin County, before John C. M'Alister, Esq., or some other Justice of the Peace of said County, on Friday, the 8th day of January, 1830, betwixt the hours of 9 o'clock in the forenoon, and 4 o'clock in the afternoon of said day, at which times and places you may attend and cross-examine the deponents, if you think proper.

S. DOUGLAS,
Attorney for Plaintiff.

December 8th, 1829.

Dauphin County, *set.*

Before the subscriber, a Justice of the Peace in and for the County of Dauphin, personally came S. Douglas, who being duly sworn says, that on this 9th day of December, 1829, he served the foregoing rule and notice on Stephen Duncan, Esq., one of the defendants, and George Fisher, Esq., their attorney, and left a true copy thereof with each of them.

S. DOUGLAS.

Sworn and subscribed before me, Dec. 9th, A.D. 1829.
WM. AYRES.

Depositions of Rebecca Clark, Keziah Martin, Frederick Myers, and Jacob Neubacker.

Dauphin County, *set.*

In the Circuit Court of Dauphin County, of December Term, 1826.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COWFAR, JOHN HOLLAND, and ROBERT BOWER. } No. 7.

And now, to wit, on the 6th day of February, 1829, rule to take depositions on the part of the plaintiff, ex-parte, on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state on the deposition, the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record the 6th day of February, 1829.

OBED. FAHNESTOCK,
Clerk.

To Wm. Elliot, John Coufar, John Holland, and Robert Bower, Esq., defendants in the above-stated cause.

Please to take notice, that in pursuance of the foregoing rule of court, the depositions of witnesses, to be read in evidence on behalf of the plaintiff on the trial of the cause, will be taken at the house of Wm. Reed, in Halifax Township, Dauphin County, before Wm. Ayres, Esq., or some other Justice of the Peace of said county, on Friday, the 27th day of February, 1829; between the hours of 10 o'clock in the forenoon, and 4 o'clock in the afternoon of said day, when and where you may attend, and cross-examine the deponents, if you think proper.

S. DOUGLAS,
Attorney for Plaintiff.

February 6th, 1829.

Rebecca Clark being duly sworn, saith: That about forty-two or three years ago I came to the mouth of the Juniata, or near what was called the Big, or M'Elcar's Island; the family of M'Elcars lived on the island since deponent's recollection; the old man Patrick died on the head of the island; his sons remained in the possession until turned off by Thomas Duncan. Deponent states that some time after the death of the old man, Peter, one of the sons moved to New York State, and left his brothers in possession, who remained in possession until put off by Thos. Duncan. Deponent has no knowledge of any other persons ever claiming the island but the M'Elcars, until Thos. Duncan came with his claim. Deponent further states, that she lived on the island with and in the house of Geo. Clark, when Thomas Duncan came on the island, in A.D. 1802, as deponent believes. Mr. Duncan inquired for Mr. Geo. Clark; when Mr. Clark came to the door, Mr. Duncan said that he was now the owner of the island, and if he, Clark, would move off quietly, and give no trouble, he should have the crop in the ground, but if he refused, he, Duncan, would throw him out by martial law. In the spring following, in the month of March, Thos. Duncan sent his tenants in upon them before they had moved out. Jacob Miller was the tenant of Duncan, which moved in the house where deponent lived.

S. Duncan appears and objects to every part of the foregoing deposition, and to the incompetency and legality of the same, reserving

the right of making any legal objection to the whole or any part of the same.

Question by Duncan. In what part of the island did Geo. Clark reside, at the time Judge Duncan called at his house?

Answer. He lived on the middle place; not on the Branch side.

Question. Was that the first time, to your knowledge, of Judge Duncan coming and making his claim to the island?

Answer. It was; to my knowledge.

Question. How long had you lived with George Clark?

Answer. Three years; no person was with Judge Duncan when he was there.

Question. How long did Mr. Clark live on the island after this conversation?

Answer. Clark moved out of his own house in the spring following, and moved to John Diven's house at the Branch, and lived there until the year following.

Question. What reply did George Clark make to Judge Duncan, when he told him he would turn him off with martial law?

Answer. He said he thought it hard to give up his living in his old days, where he had lived and raised his family as his father before him; nothing more passed between them.

Question. Who were present at the surveying of the island?

Answer. Robert Clark, James Martin; don't know of any more.

Question. What relation are you to George Clark?

Answer. He is my father-in-law. I think George Clark lived three years under Robert Clark on the Little Island, and two years under Mr. Duncan. Knows nothing of her own knowledge of Mr. Duncan's putting off the M'Elcars; says that the M'Elcars moved off the island in the spring following, after we had all been warned off.

Question. Did you ever see Thomas Brown on the Big Island or know of his being on the island while George Clark lived on the Big lived there?

Answer. Don't recollect seeing him there.

her
REBECCA ⋈ CLARK.
mark.

The foregoing deposition, taken at the house of William Reed, on the 8th day of January, 1830, between the hours of nine and four o'clock on said day. S. Douglas attending on part of the plaintiff. S. Duncan attending on part of the defendants.

WM. AYRES.

Keziah Martin, being duly sworn, saith, that the time of the Indian war, they fled from Northumberland County—thinks about the year 1782 or 3; this immediately after the surrender of Freeling's Fort,

near what is now called Milton. Deponent's father settled at the mouth of Juniata River, and immediately opposite to M'Elcar's Island. The family of M'Elcars were living on the island. The old man Patrick died on the island. His sons remained in possession of the island until they were turned off by Thos. Duncan. Peter, one of the sons, some time after the death of his father, moved to the state of New York, and left his brothers in possession, who remained there, and held the same until they were turned off by Thos. Duncan. Peter M'Elcar, the present plaintiff, is the son of Patrick.

S. Duncan appears, and objects to each and every part of the foregoing deposition, and to the incompetency and legality of the same, and reserves the right of making any legal objection to the whole or any part of the same.

Question by S. Duncan. What do you mean by Mr. Duncan turning them off?

Ans. The common report was that they were turned off. Knew nothing of her own knowledge.

Question. Where did Daniel and Martin M'Elcar live after Judge Duncan got possession of the island?

Ans. Don't know.

Question. Are you a sister of Rebecca Clark?

Ans. Yes.

Question by S. Douglas. State whether M'Elcars, and others that were on the island, left it after Mr. Duncan got possession of it?

Ans. I knew them all to leave it.

Question by same. Do you know of the time and cause of their leaving the island?

Ans. I do not.

KEZIAH MARTIN.

The above deposition, taken at the house of Wm. Reed, on the 8th day of January, 1830, between the hours of nine and four of said day. S. Douglas attending for the plaintiff, and S. Duncan for the defendants.

WM. AYRES.

By virtue of the foregoing rule of court, Frederick Myers, being duly sworn, says:

That Daniel and Martin M'Elcar were at my house in Halifax. I asked them why they did not pay the rent to Peter, their brother. They said that Mr. Duncan wanted the rent, and they would not pay them both. This was in the year 1799. They said they had rented from Peter, but Mr. Duncan now claimed the rent. I have known the island 39 or 40 years. Deponent was about 29 or 30 years of age when he first came to the neighborhood, and is near 70 years of age now.

S. Duncan appears, and objects to each and every part of the

foregoing deposition, and to the incompetency and legality of the same, and reserves the right of making any legal objection to the whole or any part of the same.

Deponent recollects Peter M'Elcar moving to the State of New York, but don't know how long he was absent—perhaps three or four years or more, until he seen him on his return. Deponent says that Daniel and Martin M'Elcar told him that Peter had sued them for the rent. I am not sure of the year, but think it was in ninety-eight or ninety-nine.

Question by S. Douglas. Who did they live under on the island?

Answer. They said they lived under Peter at that time, and that he had sued them for the rent.

FREDERICK MYERS.

The above deposition, taken at the house of Wm. Reed, in Halifax, on the 8th day of January, 1830, between the hours of 9 and 4 o'clock. S. Douglass attending on the part of the plaintiff. S. Duncan attending on the part of the defendants.

WM. AYRES.

Dauphin County, *sct.*

By virtue of the foregoing rule of court, personally came Jacob Jones, who, being duly sworn, saith: That he is about fifty-five or six years of age; that so long as his recollection serves him back, the family of M'Elcars lived on what was called the Big Island, or M'Elcar's Island; they lived on the upper end of the island; the father, Patrick, died on the island, and his sons remained in the possession of the same, long after his death. Peter, one of the sons, moved off the island some years after the death of his father, and left his other brothers, Thomas, Martin, Daniel, John, Jacob, and George. Deponent does not know whether the brothers all remained there, but recollects that some of the sons came on, and in possession of the island until they were turned off by Thos. Duncan. During the whole time of their living on the island, it was always called and known by their name, and as their property, and not claimed by any other person. Deponent was born near the island, and has lived ever since in the neighborhood close by.

JACOB JONES.

The above deposition, taken at the house of Wm. Reed, on Friday, the 8th day of January, A. D. 1830, betwixt the hours of 9 o'clock in the forenoon and four in the afternoon, and the same kept open until four in the afternoon, no person attending on the parts of the defendants to cross-examine the witnesses. S. Douglas attending on the part of the plaintiff.

Before me,

WM. AYRES.

Jacob Newbaker being duly sworn, saith, that he came to the Susquehanna River opposite to the Big, or what was called M'Elcar's Island, in the year A. D. 1785; the family of the M'Elcars lived on the head of the island, and continued there until turned off by Thomas Duncan. The property was always considered M'Elcar's, and known as no other, until claimed by Thomas Duncan. Deponent knows that Peter M'Elcar moved to the State of New York, and left his brothers in possession, who remained in possession until put off by Thomas Duncan.

his
JACOB ⋈ NEWBAKER.
mark.

The above deposition, taken at the house of Wm. Reed, in Halifax township, between the hours of 9 o'clock in the forenoon and 4 in the afternoon, on Friday the 8th day of January, A. D. 1830, the same kept open until 4 o'clock in the afternoon. No person attending on part of the defendants to cross-examine. S. Douglas attending for plaintiff.

Before me,

WM. AYRES.

In the Circuit Court of the United States, for the Eastern District of Pennsylvania.

Ejectment, for an Island in the Susquehanna River.

JOHN DOE, a citizen of the State of Delaware, lessee of Isaac Fisher, a citizen of the State of Delaware,
v.
RICHARD ROE, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession, and Jacob M. Haldeman, Esq., landlord of the premises.

April Sessions, 1840.

And now, to wit, this twelfth day of August, in the year 1843, came before me, Samuel P. Lilley, Esq., one of the associate judges of the Court of Common Pleas, in and for the County of Mifflin, in the State of Pennsylvania, at my chambers in the said County of Mifflin, Isaac Fisher, of the borough of Lewistown, in the said County of Mifflin, and made due and legal proof before me, that the testimony of Paul Steel and others is necessary on the part of the plaintiff in the above cause, it being a civil action, now pending in the Circuit Court of the United States for the Eastern District of Pennsylvania; and that the said Paul Steel lives at a greater dis-

tance from the place of trial of said cause than one hundred miles, to wit, in the County of Mifflin, in the State of Pennsylvania.

I therefore adjudge, that the deposition of Paul Steel and others shall be taken on Saturday, the second day of September, Anno Domini 1843, between the hours of 9 o'clock A.M. and 4 o'clock P.M. of the said day, at the house of James Turner, innkeeper, in the Borough of Lewistown, in the County of Mifflin, and State of Pennsylvania, before me.

I, the said Samuel P. Lilley, judge as aforesaid, not being attorney or counsel to either of the parties, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal, this 12th day of August, in the year 1843.

SAM'L P. LILLEY, [SEAL.]
One of the Judges of the Court of
Common Pleas of the County of Mifflin.

And hereby make this notification to the adverse party, the defendants, tenants in possession, and landlord, to be present at the taking of the said depositions, and to put interrogatories, if he or they think fit.

To Mr. Richard Roe, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Eckert, Samuel Carman, tenants in possession, and Jacob M. Haldeman, Esq., landlord of the premises.

SAM'L P. LILLEY.

Pennsylvania, to wit:

Personally appeared before me, the undersigned, one of the judges of the Court of Common Pleas, in and for the County of Dauphin, in the State aforesaid, T. C. Merklein, who, having been first sworn, according to law, deposes and says, that he served a written copy of the within and foregoing order and notification to take the deposition of Paul Steel and others, on Jacob M. Haldeman, Esq., on the 19th day of August, A.D. 1843, by delivering the said copy to a free white person, a member of the family of the said Jacob M. Haldeman, at his dwelling-house.

T. C. MERKLEIN.

Sworn and subscribed before me, 19th August, 1843.

N. B. ELDRED,
Pres. Judge.

And now, viz., the 2d day of September, in the year 1843, personally appeared before me, the undersigned, one of the judges of the Court of Common Pleas, in and for the County of Mifflin, Paul Steel, at the house of James Turner, in the Borough of Lewistown, in said county, who having been first carefully examined and cautioned and

sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

I am seventy-six years old the 18th day of last July; I have been a farmer all my life; I came to live near the Big Island when I was about 17 years old. The island is in the Susquehanna, near the mouth of the Juniata. I have fished on that island when the M'Elcars lived on it. I knew the island at the time the M'Elcars left it, and gave it up to Mr. Duncan at the time they left it; I believe the island was worth from twenty to thirty dollars, by the acre. I think the annual average rent of the island would be worth one thousand dollars per year, from the year 1802, up to this time.

his
PAUL ⋈ STEEL.
mark.

SAM'L P. LILLEY,
One of the Judges of the Court of Common Pleas, in and for the County of Mifflin, in the State of Pennsylvania.

The above deposition of Paul Steel was taken and sworn to, in the presence of Isaac Fisher, who attended as the attorney for the plaintiff, and in the presence of David W. Hulings, Esq., who attended as attorney for the defendant.

SAM'L P. LILLEY.

September 2d, 1843.

I further certify, that the deposition aforesaid of the said Paul Steel, was reduced to writing by me, in the presence of the witness, the said Paul Steel, after it was so reduced to writing by me, in his presence, and after it was read over to him, which said deposition, with the cause of taking the same, and the notification, I have sealed up and directed to the Circuit Court of the United States for the Eastern District of Pennsylvania, at Philadelphia; Isaac Fisher attending on the part of the plaintiff, and D. W. Hulings attending on the part of the defendant, as the attorneys of the parties at the said examination.

In witness whereof I have set my hand and seal, this 2d day of September, 1843.

SAM'L P. LILLEY,
One of the Judges of the Court of Common Pleas, in and for the County of Mifflin, in the State of Pennsylvania.

Deposition of John Holland.

In the Circuit Court of the United States, for the Eastern District of Pennsylvania.

Ejectment for an Island in the Susquehanna River.

JOHN DOE, a citizen of the State of Delaware, lessee of ISAAC FISHER, a citizen of the State of Delaware,
v.
RICHARD ROE, a citizen of the State of Pennsylvania, with notice to JOHN CARTER, DANIEL MILLER, ABRAHAM MILLER, ANTHONY ECKER, and SAMUEL CARMAN, tenants in possession, and JACOB M. HALDEMAN, ESQ., landlord of the premises. } April Sessions, 1840.

And now, to wit, this tenth day of August, in the year 1843, came before me, John Beale, one of the Judges of the Court of Common Pleas, in and for the County of Juniata, in the State of Pennsylvania, at my chambers in the said County of Juniata, Isaac Fisher, of the Borough of Lewistown, in the County of Mifflin, and made due and legal proof before me, that the testimony of John Holland, Mrs. Keesberry, wife of John Keesberry, Daniel Siddick, Henry Gray, James Shields, and others, is necessary on the part of the plaintiff in the above cause, it being a civil action, now pending in the Circuit Court of the United States, for the Eastern District of Pennsylvania; and that the said John Holland, Mrs. Keesberry, wife of John Keesberry, Daniel Siddick, Henry Gray, James Shields, and others, live at a greater distance from the place of trial of the said cause than one hundred miles, to wit, in the County of Perry, in the State of Pennsylvania, before me.

I therefore adjudge, that the depositions of John Holland, Mrs. Keesberry, wife of John Keesberry, Daniel Siddick, Henry Gray, James Shields, and others, shall be taken on Tuesday, the twelfth day of September, 1843, between the hours of 9 o'clock A. M. and 4 P. M. of the said day, at the house of John Keesberry, in the County of Perry, at the falls of the Juniata River, and at the first lock on the Juniata Canal, above Duncan's Island.

I, the said John Beale, Judge as aforesaid, not being attorney or counsel to either of the parties, nor interested in the event of the cause.

In witness whereof I have hereunto set my hand and seal, this tenth day of August, in the year 1843.

JOHN BEALE. [SEAL.]

And hereby make this notification to the adverse party, the defendants, tenants in possession, and landlord, to be present at the

taking of the said depositions, and to put interrogatories, if he or they think fit.

To Richard Roe, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession, and Jacob M. Haldeman, landlord of the premises.

JOHN BEALE,
Judge of the Court of Common Pleas of the County of Juniata, in the State of Pennsylvania.

Pennsylvania, to wit:

Personally appeared before me, the undersigned, one of the Judges of the Court of Common Pleas, in and for the County of Dauphin, in the State aforesaid, F. C. Merklein, who, having been sworn according to law, deposes and says, that he served a written copy of the within and foregoing order and notification, to take the depositions of and others, on Jacob M. Haldeman, Esq., on the 19th day of August, 1843, by delivering the said copy to a free white person, a member of the family of the said Jacob M. Haldeman, at his dwelling-house.

F. C. MERKLEIN.

Sworn and subscribed before me, on the 19th of August, 1843.
N. B. ELDRED,
President Judge.

And now, to wit, this 12th day of September, in the year 1843, personally appeared before me, John Beale, Esq., Judge as aforesaid, at the house of John Toland, in the County of Perry, to which place the taking of these depositions had been adjourned, by the consent of the parties, from the house of John Keesberry, John Holland, of the said County of Perry, who having been first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I moved to the island in 1822; I lived with my father; I saw Peter M'Elcar on the island different times; I saw him at my father's house on the island; I cannot recollect his conversation particularly, but I recollect I heard him say, he would have the island some day or other; the tenants on the island were my father, John Holland, Wm. Elliot, and Robert Bower, and John Crowfar. [I heard my father, Wm. Elliot, and Robert Bower say, whilst they resided on the island, that Peter M'Elcar was there, and said that they must come under lease again, another year to him; they made light of it, and laughed at it, and considered it a good joke.] (The evidence contained between the brackets objected to by defendants' counsel as illegal testimony.) I heard Peter M'Elcar say, on the Big Island, the island in dispute in this action, that he would sell the Little Island for damage, for keeping him out of possession of the

Big Island. My father, and the other tenants of the Big Island, rented from Mr. Stiles, the agent of Judge Duncan; my father moved to the island in 1822, and remained there two years, and lived there in 1822 and 1823, until the spring of 1824. I am certain that Peter M'Elcar was there in 1822 and 1823, both years I think he lived at Lewistown during that time.

Cross-examined by defendants' counsel, Mr. Kunkel.

At the above time, in 1822 and 1823, he, Peter M'Elcar, was backwards and forwards, in the neighborhood of the island, very frequently. I am well acquainted with Peter M'Elcar. I was born in 1803, March 6th, and am now forty years of age, last March. The island referred to is the island now in possession of Jacob M. Haldeman.

JOHN HOLLAND.

In testimony that the above and foregoing deposition of John Holland was truly taken by me, and reduced to writing by me in the presence of and hearing of the witness, after the said witness had been first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and that the same was written down by me, as it was delivered and deposed by the witness, and that after the same was reduced to writing, in the presence and hearing of the witness, I read the same over to him, who then subscribed the same with his proper name in my presence, I have hereunto set my hand and name, and affixed my seal, at the place of taking the same, this 12th day of September, 1843; both parties appearing by their counsel, at the examination of the witness.

In witness whereof, I have hereunto set my hand and seal, this 12th day of September, 1843.

[SEAL.] JOHN BEALE,
One of the Judges of the Court of Common Pleas, of the County of Juniata, and State of Pennsylvania.

I further certify, that the foregoing deposition of John Holland, together with a certificate of the reasons of the taking of the same, and the notice to the adverse party, are this day sealed up by me, and directed to the Circuit Court of the United States, for the Eastern District of Pennsylvania, at Philadelphia, the 12th day of September, 1843.

JOHN BEALE,
Judge as aforesaid.

Deposition of Peter M'Elcar.

In the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit, of April Sessions, 1840.

Ejectment, for an Island in the Susquehanna River, in the County of Dauphin.

JOHN DOE, a citizen of the State of Delaware, lessee of Isaac M. Fisher, a citizen of the State of Delaware,
v.
RICHARD ROE, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession, Jacob M. Haldeman and Co., defendant.

1840, April 1st, Rule, E. P. Plaintiff to take depositions of witnesses in Lewistown, Mifflin County, Pennsylvania, on fifteen days' notice, and James Gibboney, Esq., as plaintiff's commissioner.

And now, to wit, this twenty-second day of October, in the year of our Lord one thousand eight hundred and forty, before me, James Gibboney, Esq., the commissioner named in the foregoing and annexed rule of the Circuit Court of the United States for the Eastern District of Pennsylvania, at my office in the borough of Lewistown, for the County of Mifflin, State of Pennsylvania.

Personally came Peter M'Elcar, an inhabitant of the said borough, living and residing in the said borough of Lewistown, and County of Mifflin, who, having been first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

To the first interrogatory, on the part of the plaintiff, the witness says:

I know Mr. Haldeman, the defendant, and Mr. Fisher, for I sold my right to him; I have seen all the other defendants.

To the second interrogatory, on part of the plaintiff, witness says:

I have known the Big Island, or M'Elcar's Island, for seventy years, the property in dispute in this action.

To the third interrogatory, on the part of the plaintiff, the witness says:

Patrick M'Elcar, my father, lived on the head of the island when I first knew it, seventy years ago. I am now in my seventy-fourth year. Seventy years ago George Clark lived on the island on the Big River side, next below my father. Below Clark, on the same side of the island, William Baskin lived. John Diven lived on the branch side, near midway of the island. John Mellen lived about

seventy or eighty rods above Diven, on the Branch or west side of the island. Patrick M'Elcar owned and held three hundred acres at the head of the island. George Clark held about seventy-five acres below. Baskins held, on the river or east side, from George Clark down to the Point, and on the west side up to Diven's house, and Diven's house stood about ten feet over Baskins' line, on the land of John Mellen. Diven was married to Baskins' sister, and they held between them that front of the island which had formerly belonged to old Francis Baskins, the father of William and of Mrs. Devin. Above Devin, on the west side of the island, lay the land of John Mellen, about one hundred and seventy-five acres. The above persons lived upon, held, and owned, the whole of the island, from the time I first knew it until John Mellen sold to one Robert Boyd, which was about sixty years ago. Mellen then moved off and Boyd came into possession of his land, and lived there until he died. Boyd died about fifty years ago, or more; he made a will, and left William Cook his executor. Three or four years after the death of Boyd, Daniel M'Elcar (my brother) and myself bought the land of Boyd of his executor, William Cook, and paid Cook for the land, and went into possession of it, and held it until the spring of 1802, about the last of April or first of May, when we were all turned out of possession by Thomas Duncan, Esq.

George Clark lived on his place till the spring of 1802, when he was turned off by Mr. Duncan. Baskin and Devin lived on their places on the island, until the spring of 1802, when they were also turned off by Mr. Duncan. My father lived on his place, on the head of the island, until the year 1795, when he died; he was buried on the first of January, 1796. Patrick M'Elcar left his land on the island, being about three hundred acres, to his sons, Jacob, Thomas, Daniel, Martin, and Peter (the witness). My father owned, beside the 300 acres, about thirty acres adjoining George Clark and John Mellen; this thirty acres fell to Thomas M'Elcar under the will of my father. On the death of my father, Thomas went immediately into possession of the thirty acres, and lived there until the spring of 1802, when Mr. Duncan turned him off with the others. The three hundred acres at the head of the island was left by my father to Jacob, Daniel, Martin, and myself (the witness). Immediately on the death of my father, my brothers, Jacob, Daniel, Martin, and myself, went into possession of the said three hundred acres of land; and all lived there, except (the witness), Peter, until about the first of May, 1802, when they were turned off by Thomas Duncan, Esq. In the year 1798 I leased my part of the island to my brothers, Daniel and Martin, for three years, with the shad fishery attached to it. I leased my part of the three hundred acres at the head of the island, with the shad fishery attached to it, to Daniel and Martin jointly for three years; and my part of the land that Daniel and I bought of Boyd's executors on the Branch side, containing one hun-

dred and seventy-five acres, to Daniel alone. Each of these leases were for three years, and each lease expired in the year 1801; the leases were in writing, but have both been lost, by time or accident, and I cannot now find them, nor do I know where they are. I have oftentimes made diligent search for them, but never could find them, nor do I know what has become of them.

My brothers Daniel and Martin went into possession of my parts of the island under my leases, in the year 1798, as my tenants, and held and occupied the whole of my land on the island until 1802, about the first of May, when they were turned off by Thomas Duncan, Esq.

To the 4th Interrogatory the witness says, Thomas Duncan got possession of the island claimed by the plaintiff in this suit, about the last of April or first of May in the year 1802. Daniel M'Elcar and Martin M'Elcar, who were the tenants of the witness, Peter M'Elcar, being at that time dispossessed and turned off the island by Mr. Duncan; as were also, at the same time, Thomas M'Elcar, and Jacob M'Elcar, John Diven, William Baskin, and George Clark.

To the 5th Interrogatory, on the part of the plaintiff, the witness says, Mr. Duncan came to the island and told the people on the island that the island belonged to him (Mr. Duncan), and that they had no right to it whatever; and by this means scared them to give him the possession; and turned out my tenants, Daniel and Martin M'Elcar, with other inhabitants of the island.

To the 6th Interrogatory, on the part of the plaintiff, the witness says, I heard Daniel M'Elcar and Martin M'Elcar say, in the fall of 1800, when I called upon Daniel and Martin for my rent on the island, they said Mr. Duncan had come there and said they had no right to the island; Duncan said the land is mine, and you cannot have it; if you don't become my tenants, I'll turn you out by the martial law, and tear you to pieces. If you will become my tenants, I will make the rent very light to you; you shall have it for two ears of corn and three shad per year. Daniel and Martin at the same time told him they were bound to pay their brother Peter rent for his part of the island. Mr. Duncan then told them neither they nor Peter have any title to the land, and I will keep you clear of him. My brothers said at the same time that Mr. Duncan was a rich man and a great lawyer, and they did not think they were able to stand against him; they said they had no other means to look about for a place to go to, than to take a lease of Mr. Duncan; this was while my brothers yet lived on the island, and while Daniel and Martin were my tenants. I told them not to give up the land to Duncan, and that I would look to them for my rent and for my land at the expiration of my lease to them; this conversation took place on the island, and on the land claimed by the plaintiff in this action, while my brothers were in possession of the island. On the same day, I saw William Baskin, George Clark, and John Diven, who all then lived on the island; they

told me that Mr. Duncan had come to them on the island, and told them the island belonged to him (Duncan), and that they had no right to it; and that Duncan told them that, if they would go off the island peaceably, he would make them a present; but if they would not go off peaceably, he would turn them off by martial law, and break them up. Baskin, Clark, and Diven told me this in their own houses on the island, while they yet lived on the island with their families. They said they must do something, and they could not go to law with Mr. Duncan, for he was the richest man and greatest lawyer in the country; they said they had to give up to save themselves and their families.

To the 7th interrogatory on part of the plaintiff, the witness says: he has nothing to say, as he knows nothing in reply to this interrogatory, except what he has already said in reply to the 6th interrogatory on part of the plaintiff.

To the 8th interrogatory on part of the plaintiff, the witness says: In the year 1822, in the summer, I went upon the island claimed by the plaintiff in this cause. At that time I was the owner of the whole island as I believe (except Geo. Clark's part). I then went to each and every house upon the island, to wit, Wm. Elliott, John Kouffer, John Holland, and Robt. Bower, and told the people at each of the houses respectively, that I had come to give them notice that the island was mine, and I had come to take possession of it. I told the people on the island they must consider themselves my tenants, and not to pay Mr. Duncan any more rent. While on the island, I went into the orchard, and pulled cherries from the trees, as evidence that I had taken possession of the island. I made this entry upon the island in the summer of 1822, under the direction of my counsel, for the purpose and with the intent of stopping or barring the statute of limitations of twenty-one years from destroying my title to the island. Late in the fall of 1822, after I had received the deed from Geo. Clark for his part of the island, I again went upon the island, under the direction of my counsel, and entered into each and every dwelling-house upon the island, and told the people each and every house, that the island was mine, that I had come to take possession of it, and did then take possession of it; that they must consider themselves my tenants, and not to pay Mr. Duncan any more rent. When on the island in 1822, in the fall, I went into the orchard, and pulled apples, as evidence that I took possession of the island, and stuck my staff in the ground, and told the people there this island is mine, and I now take possession of it. I made the entry upon the island, and took possession of it in the fall of 1822, under the direction of my counsel, and for the purpose of barring and preventing the operation of the statute of limitations of twenty-one years against my title to the island. When I made the entry upon the island in the year 1822, I took Henry Bowman with me as a witness. I made

a similar entry upon the island, and for similar purposes, in each and every year for seven or eight years after 1822.

In the year 1839, about the first of July, I again went upon the island, and made entry into it. A short time before I conveyed my title to the island to Isaac M. Fisher, of the State of Delaware, I again took Henry Bowman with me as a witness. In 1839, I went to each and every house on the island, and gave notice to the people living in the houses, that the island was mine, and I had come to take possession of it, and did then take possession of it; that they should consider themselves my tenants, and not to pay Mr. Haldeman any more rent. I made the entry upon the island in the year 1839 under the direction of my counsel, for the purpose of barring and preventing the statute of limitations of twenty-one years from destroying my title to the island. At the time I made the entry upon the island, late in the fall, or the beginning of the winter, 1822, I had received, and then had in my possession, my deeds from Geo. Clark, Wm. Baskins, John Diven, Martin and Daniel M'Elcar, Thos. M'Elcar, and the heirs of my brother, Daniel M'Elcar, for their respective titles to their portions of the island.

To the 9th interrogatory on part of plaintiff, the witness says: The land on the island claimed by the plaintiff in this suit was worth, in my opinion, about forty dollars per acre in the year 1802. I believe that the annual net profits or rents of this island from the year 1802 up to the year 1840 have been at least $1000 per annum. I made all the entries upon the island as set forth and described in my answer to the 8th interrogatory on part of the plaintiff, and at the times and in the manner there described, for the express purpose of saving my title to the island from being destroyed or impaired by the statute of limitations. I remember this island distinctly as far back as the year 1770. At that time, the field around my father's house was an old field, and the stumps gone, and I believe, from the appearance of the land, it had been cleared fifteen or twenty years. The fields around the houses of Geo. Clark and Wm. Baskins appeared to be cleared as long as the fields around my father's house in the year 1770. My father's house on the island was an old log-cabin house, built of hickory logs; and at that time some of the logs were rotted off at the ends. The houses of Baskin and Clark were also old houses at that time.

PETER M'ELCAR.

At the same time and place, the said Peter M'Elcar having been first duly sworn by me, James Gibbony, the commissioner as aforesaid, to tell the truth, the whole truth, and nothing but the truth, to the first interrogatory, on part of the defendant, the witness says:

I am in the 74th year of my age; I have no particular occupation; I live in Lewistown, Mifflin County, Pennsylvania; I have lived here about 21 years; I was born in Lancaster County, Pennsylvania;

before I came to live in Lewistown, I lived last in Buffalo Township, Cumberland County, now Perry County.

To the 2d interrogatory, on part of the defendant, the witness says: I once lived on the Big Island, the premises in dispute; I lived on that island more than thirty years; I came to live on that island when I was a small child, before the time of my memory; I suppose about the year 1767 or 1768; I moved off that island in 1798, and left my part of the island, about 175 or 180 acres, in possession of my tenants, Daniel and Martin M'Elcar.

To the 3d Interrogatory, on part of the defendant, the witness says: I did. I owned and claimed a part of that island from the year 1790, until the first day of August, in the year 1839; and I owned and claimed the whole of that island, and the possession thereof, from the year 1822, until the first day of August, 1839. In the year 1822, in the summer, I went upon the island claimed by the plaintiff in this cause; at that time I was the owner of the whole island, as I believe (except George Clark's part). I then went to each and every dwelling-house upon the island, to wit, Wm. Elliot, John Kouffer, John Holland, and Robert Bower, and told the people at each of the houses respectively, that I had come to give them notice that the island was mine, and I had come to take possession of it; and did take possession of it; I told the people on the island they must consider themselves my tenants, and not to pay Mr. Duncan any more rent. When on the island, I went into the orchard and pulled cherries from the trees, as evidence that I had taken possession of the island. I made this entry upon the island, in the summer of 1822, under the direction of my counsel, for the purpose and with the intent of stopping and barring the statute of limitations of twenty-one years, from destroying my title to the island. Late in the fall of 1822, after I had received my deed of George Clark, for his part of the island, I again went upon the island, under the direction of my counsel, late in November, or early in December, and entered into each and every dwelling-house upon the island, and told the people at each and every house, that the island was mine, that I had come to take possession of it, and did then take possession of it; that they must consider themselves my tenants, and not pay Mr. Duncan any more rent. When on the island, in the fall of 1822, I went into the orchard and pulled apples from the trees, as evidence that I took possession of the island; and at the same time and place I stuck my staff into the ground on the island, and told the people then, this island is mine, and I now take possession of it. I made the entry upon the island and took possession of it late in November, or early in December, in the year 1822, and after I had received my deed of George Clark, under the direction of my counsel, and for the purpose of barring and preventing the operations of the statute of limitations of twenty-one years against my title to the island. When I made my entry upon the island in the year 1822,

I took Henry Bowman with me as a witness. I made a similar entry, and for similar purposes, in each and every year for seven or eight years after 1822. In the year 1839, about the first of July, I again went upon the island, and made entry upon it. A short time before, I conveyed my title to the island to Isaac M. Fisher, of the State of Delaware. I also took Henry Bowman with me as a witness, and went to each and every dwelling-house upon the island, and gave notice to the people living in the houses that the island was mine, and that I had come to take possession of it, and did then take possession of it; that they should consider themselves my tenants, and not pay Mr. Haldeman any more rent. I made the entry on the island in the year 1839, under the direction of my counsel, for the purpose of barring and preventing the statute of limitations of twenty-one years from destroying my title to the island. The men who lived on the island when I was there, in the summer of 1839, were, to the best of my recollection, Abraham Miller, Daniel Miller, John Carter, Anthony Ecker, and, I think, one Philip Etter, lived at the lower point of the island. I claimed the island at all times, from the year 1790, until 1839, when I sold my title, on the first day of August, 1839, to Isaac M. Fisher, the plaintiff in this action. I sold and conveyed my title to this island to Isaac M. Fisher, of the State of Delaware, on the first day of August, 1839. The consideration mentioned in the deed is fifteen thousand dollars; and that was and is the only and sole consideration; the deed is dated the first day of August, A.D. 1839. I do not know that the deed is upon record, nor where it is recorded. I have given a receipt in full on the deed for the whole consideration of the same. I received money in payment for it, at the date of the deed, and have been fully satisfied for the consideration in the deed, and have given a receipt in full for the same; the consideration was paid to me by the plaintiff in this suit. No part of the purchase-money remains unpaid; and I have no security by bond, note, or mortgage, or verbal promise, for any part of the consideration; nor shall I be entitled to receive any money, nor any other thing of value, from the plaintiff, or any other person, on account of this land or the deed for the same, in any event.

To the 4th interrogatory on part of the defendant the witness says: I am not related to any of the parties to this suit. I am Peter M'Elcar; my father lived on that island about thirty years, and owned about three hundred acres of the same; and my brothers lived there about thirty-five years or more, and I lived there myself more than thirty years.

To the 5th interrogatory on part of defendant the witness says: I know there is such a man as Isaac M. Fisher; all I know of him is my bargaining and selling my right of the island to him. I have only known him for the last two years past, and so far as I know and believe, he has always resided in the State of Delaware. I cannot tell when he left Pennsylvania, for I never knew him to live

in the State of Pennsylvania. I do not know that Isaac M. Fisher is any relation to Isaac Fisher, Esq., of Lewistown, but have been told he is his nephew.

To the 6th interrogatory on part of the defendant, the witness says: I have never before been examined as a witness in relation to the title or possession of the island and premises now in dispute in any action between Peter M'Elcar and Judge Duncan, or his devisee, or any other person. I therefore cannot say when, where, or how I was examined, whether in open court or by deposition.

To the 7th interrogatory, on part of the defendant, the witness says: Thomas Duncan got possession of the island in the year 1802; I was at that time thirty-five or thirty-six years old; I was not present myself when he took possession, and do not know who were; I did not see him take possession. I saw the tenants of Mr. Duncan in possession of the island, and my own tenants, Daniel and Martin M'Elcar, whom I had placed in possession of my land on the island, told me that Thomas Duncan had turned them out and taken possession of the island. Martin Miller, Jacob Miller, and a man by the name of Potter, were put in possession of the island by Mr. Duncan; the names of the persons who were previously in possession of the said island, were William Baskin, John Diven, Jacob M'Elcar, Thomas M'Elcar, Daniel M'Elcar, and Martin M'Elcar, and George Clark, and Peter M'Elcar; and Peter M'Elcar was in possession of part of the island by his tenants, Daniel and Martin M'Elcar.

To the 8th interrogatory, on part of defendant, the witness says: I obtained my knowledge of the means by which Judge Duncan obtained possession of that island from my brothers, Jacob, Thomas, Daniel, and Martin M'Elcar, and from John Diven, George Clark, and Wm. Baskin, while they yet lived on the island. I was not present when he took possession, and turned them off, but they all told me in the fall of 1800, while they yet lived on the island, that Judge Duncan had come to them, on the island, and had told them the island belonged to him (Judge Duncan), and that they, the people living on the island, had no right whatever to it; and if they, the people of the island, did not go away peaceably, he, Mr. Duncan, would turn them off by martial law, but if they would go away peaceably he would make them a present. My brothers, Daniel and Martin, were then my tenants, and said Mr. Duncan told them that if they did not go off peaceably he would turn them off by martial law and break them up. John Diven, Wm. Baskins, and George Clark, and Thomas and Jacob M'Elcar, all said at the same time that Mr. Duncan had used the same threatening language to them which I have stated above he used to Daniel and Martin; this was in the fall of 1800, and they told me at the same time, Mr. Duncan had come upon the island with a surveyor and surveyed the island, and they all said that they were afraid of Mr. Duncan, that he was a rich man and a great lawyer. After these people had left the

island in the year 1802, they all told me, to wit, William Baskins, George Clark, John Diven, and my brothers, Daniel, Martin, Jacob and Thomas M'Elcar, that they had left the island for fear of the threats of Mr. Duncan.

To the 9th interrogatory on part of the defendants the witness answers: These conversations took place in the years 1800, 1802, 1803, 1804. At that time I was from thirty-five to forty years of age; all the people on the island were present, to wit, my brothers, Jacob, Daniel, Martin, and Thomas, also, Baskins, Diven, and Clark, were present at these conversations, and each one of them told me in substance all that I have stated above as to the threats of Mr. Duncan to them. I do not remember that any one gave an account different from the others; Judge Duncan was not present.

Interrogatory 10th. To the 10th interrogatory on part of defendant, the witness answers: These conversations took place in the years 1800, 1802, 1803, and 1804; the same persons were present at these conversations as at the conversations mentioned in my answer to the last interrogatory, to wit, my brothers, Daniel, Thomas, Martin, and Jacob M'Elcar, John Diven, William Baskin, and George Clark, and each and all of them said the same; they said their conversations with Judge Duncan took place within two years, at various times previous to the autumn of 1800, and that similar conversations often took place between that time and the spring of 1802. I am able to fix the date of this conversation from the time I went to the island to collect my rent of my brothers, Daniel and Martin.

I do not know how much money they, the people of the island, received of Thomas Duncan, or whether it was paid in specie, or whether they received anything at all of him; I know he never paid me, Peter M'Elcar, a cent for my part of the island; I heard Diven, Baskin, and Clark say, that Mr. Duncan told them, that if they would leave the island peaceably, he would make them a present of twenty shillings per acre for their land, but if they would not go away peaceably, he would drive them away and give them nothing at all; they also said they had received their twenty shillings per acre for of Mr. Duncan, and that he, Mr. Duncan, said to them at the time, he did not give it to them as the price of their land, but as a present, the land being already his own; Baskins, Devin, and Clark said they considered their land worth twenty-five or thirty dollars per acre, and the land on the head of the island was worth more. I heard Thomas M'Elcar say that Mr. Duncan gave him twenty shillings per acre as a present for his land, and that it was a present, and not the price of his land, as the land already belonged to him, Mr. Duncan; I never heard Daniel or Martin M'Elcar say that Mr. Duncan gave them, or either of them, anything as a present or otherwise for their land.

To the 11th Interrogatory, on part of defendant, the witness

says: In the year 1822, when to take possession of the island, in the summer, I went alone; the persons in the houses were William Elliot and family, the names of the family I do not recollect; John Holland and family, the names of the family I do not recollect; Robert Bower and family, the names of the family I do not recollect; John Coufar lived on the island at the same time, and I saw his family on the island, but I do not know their names; I told them I had come to take possession of the land; they told me Mr. Coufar was out at the barn; I went over to the barn where he was stacking grain; I told him I had come to give him notice the island was mine, and I had come to take possession of it, and did take possession of the same, and that he should consider himself my tenant, and not pay any more rent to Mr. Duncan; this was in the year 1822, in the summer; I entered into each and every farm, and each and every dwelling-house on the island; I went upon that part of the island, and through the same, that my brother, Daniel, and I purchased of Mr. Cook, executor of Robert Boyd; I went upon the part that George Clark lived upon and conveyed to me; I went upon the part Wm. Baskins owned and conveyed to me; I also went upon the part John Diven owned and conveyed to me; William Elliot, John Coufar, John Holland, and Robert Bower lived on the island at that time; Peter M'Elcar lived in Lewistown, Mifflin County at that time; it was about twenty-four years after Peter M'Elcar, the witness, had moved from the island. As I before stated, I moved from the island in the year 1798, and left my brothers, Daniel and Martin, in possession of my part of the island, as my tenants, under leases from me; Daniel and Martin continued to reside on and occupy my part of the island where I had placed them as my tenants, until in or about the month of May, 1802. When on the island in the summer, and again, late in the fall of 1822, I spoke with Mr. Elliot and family, John Koufer and family, Robert Bower and family, and John Holland and family, and when I was there late in the fall, Henry Bowman was with me as a witness. My deed from George Clark is now before me, and I am satisfied it was in the early part of December, 1822, when I was there with Henry Bowman; I took apples from the trees in the orchard; I remember there were but few apples there, and they were frozen; I said to the persons on the island, I have come to give you notice that the island is mine, and I have come to take possession of it, and that I do now take possession of it, and that they should consider themselves as my tenants, and not pay Mr. Duncan any more rent. I did not and do not know the names of the families of Elliot, Cowfer, Bower, or Holland; I do not know where Elliot and family are; I do not know where Bower and family are; John Holland is dead, and his sons, John and William, live in Perry County; I know nothing of the rest of his family; John Koufer lives in Perry County, and I know nothing about his family; Henry Bowman lived in Perry

County until the spring of 1840, when he removed to Van Buren County, in the Territory of Iowa, where he now lives.

When I was on the island in the summer of 1839, I spoke to and had conversation with the tenants of Mr. Haldeman, on the island, to wit, Abraham Miller, Daniel Miller, Anthony Ecker, a man whose name I believe was Philip Etter, and I think John Carter: these persons were present, and also Henry Bowman, who was with me as a witness, in 1822 and also in 1839. I entered into and over that part of the island where my father lived and died. I entered into every farm, and every dwelling-house on the island, and took possession of the whole island; the persons who lived on the island at that time were, as I believe, the two Millers, Ecker, Etter, and Carter, above named. I lived in Lewistown, Mifflin County, at that time, as before stated; I moved from the island in the year 1798. I spoke and had conversation with the two Millers, Ecker, Etter, and I believe Carter. I said to them and each of them, that the island was mine, and I had come to take possession, and did take possession of it, and not to pay Mr. Haldeman any more rent, but to consider themselves my tenants. I have understood and believe that these persons all still live on the island, except Etter, and I do not know where he is. Mr. Bowman is in Iowa; I saw the Millers, Etter, and Carter in 1839; I saw Bowman in 1840; I saw John Koufer in 1840; he lives in Pittsburg. I have not seen John Holland for fifteen or sixteen years, nor Wm. Elliott, nor Robert Bower, for the same length of time, or any of their families; I never saw Thomas Duncan or Stephen Duncan, on that island, at each of the times I went upon the island; I went on in the morning, and came off in the evening, that is when I went to take possession of the island, I went on in the morning, and came off in the evening of the same day.

To the 12th interrogatory, on part of the defendant, the witness answers, No. I have not said so to several persons, nor to any person within a year or six months, nor at any time.

To the 13th interrogatory, on part of the defendant, the witness answers, No; I never stated any such thing.

To the 14th interrogatory, on part of defendant, the witness answers, No; I never said or thought of such a thing.

To the 15th interrogatory on the part of defendant, the witness answers, No; I never did say so to the tenants on the island, or any other person, when I was on the island in the summer of 1839. Before I sold my title, some of the tenants told me, they would a great deal rather be a tenant under me than Mr. Haldeman.

To the 16th interrogatory, on part of the defendant, the witness answers and says, I know of no such matter or thing.

PETER M'ELCAR.

I, George Miller, a Justice of the Peace in and for the County of

Mifflin, in the State of Pennsylvania, duly commissioned and acting as such, do hereby certify that the aforesaid Peter M'Elcar, a witness in the aforesaid cause, wherein the lessee of Isaac M. Fisher is plaintiff, and Abraham Miller, Jacob M. Haldeman, and others are defendants, came before me, under the aforesaid commission or rule of the Circuit Court of the United States, for the Eastern District of Pennsylvania, directed to James Gibbony, Esq.

On the 22d day of October, in the year 1840, in the presence of the said James Gibbony, Esq., and before being examined by the said James Gibbony, Esq., the said Peter M'Elcar was duly sworn by me to tell the truth, the whole truth, and nothing but the truth, as a witness in the said cause. In testimony whereof I have hereunto set my hand, and affixed my seal, at the County aforesaid, this 22d day of October, in the year 1840.

PETER M'ELCAR.

GEORGE MILLER.

In testimony that the above and foregoing deposition of Peter M'Elcar was truly taken and reduced to writing by me, in the presence and hearing of the witness in the aforesaid cause, wherein the lessee of Isaac M. Fisher is plaintiff, and Abraham Miller, Jacob M. Haldeman, and others are defendants, after the said witness had been first sworn to tell the truth, the whole truth, and nothing but the truth, and that the same was written down by me, as it was delivered and deposed by the witness, and that after the same was so reduced to writing by me, in the presence and hearing of the witness, I read the same over to him, who then subscribed the same with his proper name in my presence, I have hereunto set my hand, and subscribed my name, and affixed my seal, at Lewistown, in the County of Mifflin, the twenty-second day of October, in the year 1840.

JAMES GIBBONEY. [SEAL.]

To the Judges of the Circuit Court of the United States, sitting in and for the Eastern District of Pennsylvania, I, the said James Gibboney, commissioner as aforesaid, named in the said rule or commission hereto annexed from the said Circuit Court of the United States, do certify, that the said deposition of the said Peter M'Elcar, as reduced to writing by me, is contained in a certain schedule hereto annexed, containing in the whole thirty-four pages, and that each page of the said schedule is numbered from 1 to 34, and that my name, James Gibboney, is written by me at the top of each page; and that the manner in which I have executed said rule or commission of the said Circuit Court, appears by the said schedule hereunto annexed. I further certify to the said Judges of the said Circuit Court, that I have carefully sealed up the said rule or commission of said Court to me directed, together with the deposition of the said

Peter M'Elcar thereto annexed, as taken by me in pursuance thereof, and directed the same to the Judges of the Circuit Court of the United States, for the Eastern District of Pennsylvania, in the Third Circuit, and that I have sealed the envelope containing the said rule or commission and deposition with my proper seal in three places, and written my name across and at the side of each seal, and indorsed on the said envelope, Not to be opened, except in open Court.

In witness whereof, I have hereunto set my hand and seal, at Lewistown, in the said County of Mifflin, this 22d day of October, in the year 1840.

JAMES GIBBONEY, [SEAL.]
Comr.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOHN DOE, a citizen of the State of Delaware, lessee of Isaac M. Fisher, a citizen of the State of Delaware,
v.
RICHARD ROE, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession. } April Sessions, 1840.

1840, April 1. Rule, ex parte. Plaintiff to take depositions in Lewistown, Mifflin County, Pennsylvania, on fifteen days' notice, and James Gibboney, Esq., named as plaintiff's commissioner.

United States, Eastern District of Pennsylvania, *sct.*

I certify the foregoing to be a true and faithful copy of the rule filed in the above case.

Witness my hand and the seal of the said Circuit Court at Philadelphia, this thirtieth day of April, A.D. 1840, in the sixty-fourth year of the Independence of the United States.

FRA. HOPKINSON,
Clerk Circuit Court.

Lessee of ISAAC M. FISHER, a citizen of Delaware,
v.
RICHARD ROE, a citizen of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession. } April, 1840. No. 11.

The plaintiff enters a rule to take depositions of witnesses in

Lewistown, Mifflin County, Pennsylvania, on fifteen days' notice to the adverse party or his attorney, and names James Gibboney, Esq., of Lewistown, in said county, his commissioner, and files the following interrogatories, to be administered to the witnesses.

Interrogatories.

1. Do you know the parties to this action?
2. How long have you known the island called the Big Island or M'Elcar's Island, in the Susquehanna River?
3. Who lived on that island when you first knew it?
4. When did Thomas Duncan get possession of that island?
5. In what way, and by what means did Mr. Duncan obtain possession of that island?
6. What, if anything did you at any time hear the possessors of the island say while they lived there, and before Mr. Duncan obtained possession, as to their agreements or contracts with Mr. Duncan respecting the island?
7. What, if anything, did you hear them say (the possessors of the island), at any time while they lived on the island, as to the conversations between them and Thomas Duncan, in relation to this island, or the title or possession of the same?
8. Have you, or have you not, any knowledge or recollection of Peter M'Elcar's having made entry and claim upon that island for the purpose of taking possession of the same, and of stopping or preventing the operation of the Statute of Limitations upon or against the title of the said Peter M'Elcar to the said island? if you have, please to relate what you know of the matter.
9. Do you know of any other matter or thing material to the cause of the plaintiff in this action?

J. G. CLARKSON,
For Plaintiff.

A true copy from the original filed.

FRA. HOPKINSON,
Clerk Circuit Court.

April 30, 1840.

In the Circuit Court of the United States of April Sessions, 1840.

JOHN DOE, a citizen of the State of Delaware, lessee of Isaac M. Fisher, a citizen of the State of Delaware,
v.
RICHARD ROE, a citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession.

No. 11.

Interrogatories to be administered, by way of cross-examination,

to witnesses to be produced, sworn, and examined, before commissioner, in the above-stated action:

Interrogatory 1st. What is your age, occupation, and place of residence? How long have you lived at your present place of residence? Where was the place of your birth, and where have you resided before you came to the place where you now live? State each particularly.

Interrogatory 2d. Did you ever reside upon the Big Island, or premises in dispute, or any part thereof? if aye, state particularly the time when you resided there, how long you lived there, and when you ceased to live there.

Interrogatory 3d. Had you ever any claim, or did you ever make any claim, to any part of the said island, or the possession thereof? If aye, when did you claim the same; and have you sold and conveyed the same; and if so, when and to whom did you sell the same, and for what sum or consideration; and what is the date of the deed by which you conveyed the same; and is the deed of conveyance upon record; and if so, at what place is it recorded? Has any part of the purchase-money been paid to you? if aye, state how much has been paid, when it was paid, and by whom; and if any part of the purchase-money has not been paid, state how much remains unpaid, and in what manner the same is secured.

Interrogatory 4th. Are you to related to any parties to this suit, or to Peter M'Elcar, or to any one who has lived on the island, the premises in dispute, or at any time made claim to it? if aye, state that relationship fully.

Interrogatory 5th. Do you know Isaac M. Fisher, the plaintiff in these interrogatories named? If aye, how long have you known him? and where has he resided during your knowledge of him? and when did he leave the State of Pennsylvania? and what relation is the said Isaac M. Fisher to Isaac Fisher, Esq., attorney at law, of Lewistown? State your knowledge fully.

Interrogatory 6th. Have you ever been examined as witness before, in relation to the title or possession of the island and premises now in dispute in any action between Peter M'Elcar and Judge Duncan, or his devisee, or any other persons? If so, state when and where you were so examined, and whether your deposition was taken, or whether you was examined in open court? and state particularly whether your testimony then given was the same as that now given by you?

Interrogatory 7th. If you answer the plaintiff's fifth interrogatory-in-chief, state the time when Thomas Duncan got possession of said island; how old you was at the time; and what persons were present; state if you were present, and saw him take possession; or in what manner you obtained the knowledge that Thomas Duncan took the possession; and state the names of the persons who were put in pos-

session by Thomas Duncan, and the names of the persons who were previously in possession of said island.

Interrogatory 8th. If you answer the plaintiff's fifth interrogatory-in-chief, state in what manner, and by what means, you obtained the knowledge of the means by which Judge Duncan obtained the possession of that island? was you present at the time? If aye, state when it was, and who else were present. If you were not present, state from whom you obtained your information.

Reserving on the part of the defendants the right to except to the sixth, seventh, and eighth interrogatories, on the part of the plaintiffs, and to the answers that may be given to them upon all legal grounds, the following interrogatories are put under said exception:

Interrogatory 9th. If you answer the sixth interrogatory-in-chief, on the part of the plaintiff, in the affirmative, state the time when such conversation took place; how old you was at the time; and name any person that was present at the time of any such conversation, and what was said by each one. State whether Judge Duncan was present at the said conversation referred to in the sixth interrogatory on the part of the plaintiff.

Interrogatory 10th. If you answer the seventh interrogatory on the part of the plaintiffs in chief in the affirmative, state the time when such conversation took place, and name any person who was present, and what was said by each one, and how long before the time of your hearing the conversation referred to did they say that the conversation had been had with Thomas Duncan. State also by what means you are enabled to fix the date of said conversation. State further how much money they and each of them had received or were to receive of Thomas Duncan, and whether the same was paid in specie.

Interrogatory 11th. If you answer the eighth interrogatory on the part of the plaintiff in chief, state all and every person who was present at the time, in what year, and in what season of the year it was, and who was with the said Peter M'Elcar, and upon what part of the island did the said Peter M'Elcar enter, and who were living upon the island at that time; name them all; and also state where the said Peter M'Elcar lived at that time, and how long was it after the said Peter M'Elcar had left the said island; with whom did the said Peter M'Elcar speak or hold conversation upon the said island, at that time; name the persons and each of them, and what did he say to them, and where are those persons now, and how long is it since you have seen them, or either of them? Was Thomas Duncan or Stephen Duncan there at that time, and how long did the said Peter M'Elcar stay upon the said island?

Interrogatory 12th. Have you not stated to some one person within the last year, or within the last six months, that you owned or claimed the said island for which the present ejectment was brought?

Interrogatory 13th. Have you not stated within the time mentioned in the last cross-interrogatory, or at any other time, that you were to have a part of the said island in case it was recovered, and that Isaac Fisher, Esq., and your other attorneys, or any of them, were to have the residue of said island?

Interrogatory 14th. Have you not said within the time mentioned in the 13th and 12th cross-interrogatories, or at any other time, that you was to have one or two farms upon the said island, and that your lawyers were to have the residue, and that you did not know which part the lawyers would let you have?

Interrogatory 15th. Have you not told some of the tenants in possession of the island, within the last six months or year, that you owned the island, that you had not sold the same to Isaac M. Fisher, the plaintiff, and that if you recovered you would do as well by them as Mr. Haldeman, and that you and your lawyers would make the matter right with them if you recovered?

Interrogatory 16th. Do you know of any matter or thing to which you have not given evidence, which may be material to the defendants in this cause? if so state the same fully and at large.

GARRICK MALLERY,
Attorney for the Defendants and Landlord,
J. M. HALDEMAN.

April 25th, 1840. A true copy from the original filed.
FRAS. HOPKINSON,
Clerk Circuit Court.

April 30, 1840.

Depositions of H. Leibert, James Smith, John Kouffer, William Holland, and Samuel Carman.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Term, 1839. Ejectment, for an Island in the Susquehanna River, in the County of Dauphin.

JOHN DOE, a Citizen of the State of Delaware, lessee of Isaac M. Fisher, a Citizen of the State of Delaware,
v.
RICHARD ROE, a Citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession, and Jacob M. Haldeman, Esq., landlord.

And now, to wit, this 14th day of September, in the year 1840, came before me, Robert Elliot, one of the Judges of the Court of Common Pleas, in and for the County of Perry, in the State of

Pennsylvania, at my chambers, in the said County of Perry, Isaac Fisher, of the County of Mifflin, in the said State of Pennsylvania, and made due and legal proof before me, that the testimony of James Smith, Mary Smith, John Kouffer, Garman, William Holland, John Holland, William Reed, and James Black, is necessary on the part of the plaintiff in the above cause, it being a civil action, now depending in the Circuit Court of the United States for the Eastern District of Pennsylvania, and that the said James Smith, Mary Smith, John Kouffer, Garman, William Holland, John Holland, William Reed, James Black, the witnesses aforesaid, each and respectively live and reside at a greater distance from the place of trial of the said cause than one hundred miles, to wit, in the County of Perry, in the State of Pennsylvania.

I therefore adjudge, that the depositions of the said James Smith and Mary Smith shall be taken de bene esse before me, at the house of James Smith, in the County of Perry, in the State of Pennsylvania, on the 28th day of September, in the year 1840, between the hours of 12 o'clock M. and 6 o'clock P.M. of the said day; and that the depositions of John Kouffer, Garman, William Holland, John Holland, William Reed, and James Black, shall be taken de bene esse, shall be taken at the house of John Kouffer, in the town of Petersburg, in the County of Perry, on the 29th day of September, in the year 1840, between the hours of 12 M. and 6 o'clock P.M. of the said day.

I, the said Robert Elliot, judge as aforesaid, not being attorney or counsel to either of the parties, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal, at the said County of Perry, this 14th day of September, in the year 1840.

ROBERT ELLIOTT, [SEAL.]
An Associate Judge of the Court of
Common Pleas for the County of Perry.

And do hereby make this notification to the adverse party, the defendant, tenants in possession, and landlord, to be present at the taking of the said depositions, and to put interrogatories, if he or they think proper.

Witness my hand and seal, this 14th day of September, in the year 1840.

ROBERT ELLIOT, [SEAL.]
An Associate Judge of the Court of
Common Pleas of the County of Perry.

To MR. RICHARD ROE, a Citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, and Samuel Carman, tenants in possession, and Jacob M. Haldeman, Esq., landlord of the premises.

And now, to wit, September the 24th, in the year 1840, personally appeared before me, the undersigned, one of the Judges of the Court of Common Pleas, in and for the County of Mifflin, in the State of Pennsylvania, at my chambers, in the Borough of Lewistown, Henry Seibert, of the said borough, who having been first sworn according to law, deposes and says, he served the above and foregoing order, adjudication, and notification (wherein Doe, on the demise of Fisher, is plaintiff, and Roe, with notice to Haldeman, landlord, and others, tenants in possession, are defendants, and signed by Robert Elliot, Esq., one of the Judges of the Court of Common Pleas, of Perry County, dated the 14th day of September, in the year 1840, and directed to Jacob M. Haldeman, Esq., landlord, and others, tenants in possession of the premises), on the 17th day of September, 1840, by going in person to the dwelling-house of the said Jacob M. Haldeman, Esq., in the Borough of Harrisburg, and inquiring for the said Jacob, Esq., and for Mrs. Haldeman, the wife of the said Jacob, Esq., and that neither the said Jacob, Esq., nor his wife, could be found by this deponent, who made diligent search and inquiry for each of them. This deponent, then, on the same 17th day of September, in the year 1840, delivered a copy of the said order, adjudication, and notification, to the son of the said Jacob M. Haldeman, Esq., an adult free white person, and a member of the family of the said Jacob M. Haldeman, Esq., in the dwelling-house of the said Jacob M. Haldeman, Esq., with a request that the said copy might be shown and communicated to the said Jacob M. Haldeman, Esq.

H. SEIBERT.

Sworn and subscribed this 24th day of September, before me,
WM. M'CAY.

In the District Court of the United States for the Eastern District of Pennsylvania, of October Term, 1839.

Ejectment, for an Island in the Susquehanna River.

JOHN DOE, a Citizen of the State of Delaware, lessee of Isaac M. Fisher, a citizen of the State of Delaware,
v.
RICHARD ROE, a Citizen of the State of Pennsylvania, with notice to John Carter, Daniel Miller, Abraham Miller, Anthony Ecker, Samuel Carman, tenants in possession, and Jacob M. Haldeman, Esq., landlord.

And now, to wit, this twenty-eighth day of September, in the year 1840, James Smith, a witness produced on the part of the plaintiff

in the above cause, came before me, Robert Elliot, one of the Judges of the Court of Common Pleas, of the County of Perry, in the State of Pennsylvania, at the house of the said James Smith, in the Town of Newport, in the County of Perry; and the said James Smith having been carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above cause, deposes and says. I was 62 years of age the fourth day of last April; I have known the Big Island, or M'Elcar's Island, for 50 years; my father lived on it, a tenant under Wm. Baskin, when I was 12 years old; we lived there several years. When I first knew the island, old Patrick M'Elcar lived on the head of the island; Peter M'Elcar is a son of Patrick. George Clark, Michael Heron (his son-in-law), Wm. Baskins, John Diven, and my father, lived on the island at that time. After the death of Patrick M'Elcar, his sons, Thomas and Daniel, Martin and Peter, took possession of his part of the island, and lived on it. I was at the house of Francis Ellis, where or at the place Cornelius Baskins now lives, at the south side of the mouth of the Juniata River, then in Cumberland, now in Perry County, in the fall of the year one thousand eight hundred. While I was there, Thomas Duncan, Esq., of Carlisle, came to the house of Mr. Ellis; I understood from the people on the island, that Mr. Duncan had given them notice to meet him there on that day, and whilst Mr. Duncan was there, the people of the island came over to the house of Mr. Ellis, to wit, Wm. Baskins, George Clark, John Diven, and some of the M'Elcars, but how many of the M'Elcars I cannot recollect. I was working at a stable on the place for David Watts, Esq., who owned the place; I heard a good deal of conversation that day between Mr. Duncan and the people of the Big Island, the whole of which I cannot recollect. Mr. Duncan told the people who lived on the island, that by the law they had no right or title to the island whatever; that the island had belonged to the heirs of William Penn, but that he (Mr. Duncan) had gotten it from Mr. Physic, who was Penn's agent, for services that he (Mr. Duncan), had rendered to the Penns. Mr. Duncan told the people of the island, that the island was his, and that they must leave it; that if they would go away peaceably, he would make them a present of twenty shillings an acre, for what land they held on the island, but that if they would not take that and go away from the island, he would put them off by law, and give them nothing. Mr. Duncan was at that time considered one of the foremost lawyers in this country. The people on the island were generally ignorant people, in law particularly; some of them could read and write, and some could not. In the year 1800, George Clark, Wm. Baskins, John Diven, Michael Herran, and several of the sons of Patrick M'Elcar's, lived on the island. Peter M'Elcar did not live on the island at that time; he had gone away to the State of New York, and left his part of the island to his brothers to occupy for him.

The people of the Big Island, to wit, George Clark, Wm. Baskins, John Diven, Thomas M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Michael Herran, lived on the Big Island until the year 1802 or 1803, and did not leave the island until the year 1802, to my certain knowledge.

JAMES SMITH.

Which said testimony, so as aforesaid reduced to writing by me, Robert Elliott, Judge as aforesaid, was carefully read over to the said witness, after I had written it out in his own words, after he had been sworn to the same, he then signed the same, with his own proper name, in my presence. I further certify, that the above and foregoing deposition of James Smith was taken by me, at the dwelling-house of the said James, in the Town of Newport, in the County of Perry, and State of Pennsylvania, on the twenty-eighth day of September, 1840, between the hours of 12 at noon and 6 o'clock in the afternoon of said day, the examination being kept open by me until the hour of six in the afternoon, and no person appearing to cross-examine the witness, on the part of the defendant. In witness whereof, I have hereunto affixed my hand and seal, this 28th day of September, in the year 1840, at the County of Perry, aforesaid.

ROBERT ELLIOTT, [SEAL.]
One of the Judges of the Court of Common Pleas of the County of Perry, in the State of Pennsylvania.

I further certify, that the reason of taking the above and foregoing deposition of James Smith was and is, that the said James Smith resides in the town of Newport, in the County of Perry, in the State of Pennsylvania, at a greater distance than one hundred miles from the City of Philadelphia, and from the place of trial of the cause aforesaid, in which it was taken, and that due and legal notice of the time and place of taking the said deposition was given to the adverse party, the defendants in the said cause or action. Allowing time for the attendance of the said defendants, not less than at the rate of one day, Sundays excluded, for every twenty miles travel after the time of the notice.

I further certify, that I have sealed up the deposition of the said James Smith, which was so as aforesaid reduced to writing in his presence, with my own hand, and have directed the same to the Circuit Court of the United States, for the Eastern District of Pennsylvania, in the City of Philadelphia. I have also written Robert Elliott on each page of the said deposition, and of the notification, adjudication, and proof of notice annexed to the same, the said James Smith having subscribed his name to the said deposition, after he had been sworn to the same, and after it had been reduced to writing by me in his presence, and after it had been carefully read over to him.

In witness whereof I have hereunto set my hand and seal, this 28th day of September, 1840, at the said County of Perry.

ROBERT ELLIOTT, [SEAL.]
A Judge of the Court of Common Pleas
in the said County of Perry.

And now, to wit, September 29th, 1840, at the house of John Kouffer, in the town of Petersburg, in the County of Perry, and State of Pennsylvania.

In pursuance of the above notice, Isaac Fisher appeared for the plaintiff, and James M'Cormick, Esq. on the part of Jacob M. Haldeman, saving all exceptions to the notice to Mr. Haldeman, who only returned from his journey yesterday evening, as well as to the regularity of this proceeding, and the competency of the testimony.

John Kouffer, a witness produced on the part of the plaintiff, before me, the said Robert Elliott, a Judge as aforesaid, and the said John Kouffer having been carefully examined and cautioned, and sworn to testify the whole truth in the above cause, wherein the lessee of Isaac M. Fisher is plaintiff, and Jacob M. Haldeman, Esq., and others, are defendants, deposes and says: I am seventy-six years old last April. I have known the Big Island since the year 1819, near the mouth of the Juniata River, now in possession of Jacob M. Haldeman, Esq. I moved on that island in the year 1819, and lived there seven years. I saw Peter M'Elcar back and forward on that island, but I disremember the year. I saw him walk up and down the river shore. He came to me once—I don't mind the year, but I was hauling in grain. He asked me how I had the island leased: I told him I had leased from Mr. James Duncan. He, Peter M'Elcar, said to me, I should not have given Mr. Duncan any share of the grain. I told him I could not help it, as I had bargained with him; and he went past off up the river.

Cross-examined by Mr. M'Cormick.

At the time I lived on the island, Peter M'Elcar did not live in the neighborhood as I know of. He never mentioned anything to me like claiming the island while I lived there. James Duncan, above named, was a brother to Judge Duncan. He lived in Carlisle when I heard from him. I lived on the middle farm of the island, and farmed about one-third of it. Wm. Elliott lived on the upper farm, and John Carst on the lower farm, and they were Mr. Duncan's tenants at that time.

Plaintiff again.

I saw Peter M'Elcar passing and repassing several times up and down the *the* island along the river shore, along the road that we had there; the road was above high water mark; at the time Peter

M'Elcar came to me and told me not to give any share of the grain to Mr. Duncan, I was stacking grain in my own stackyard on the farm I lived on.

JOHANNES KOUFFER.

Which deposition of the said John Kouffer was reduced to writing by me in his presence, and subscribed by the said Kouffer after it had been so written out by me and carefully read over to him.

ROBERT ELLIOTT, [SEAL.]
A Judge of the Court of Common Pleas, in the County of Perry, as witness my hand and seal.

September 29th, 1840, at the house of John Kouffer, as aforesaid, the counsel of both parties being present as aforesaid, before me, the said Robert Elliott, Judge as aforesaid, came William Holland, who having been first carefully examined and cautioned, and sworn to testify the whole truth in the above cause, wherein the lessee of Isaac M. Fisher is plaintiff, and Jacob M. Haldeman, Esq., and others are defendants, deposes and says:

I am in the 40th year of my age; my father's name was John Holland, and he has been dead about twelve years. My father once lived as a tenant of Judge Duncan on the Big Island, near the mouth of the Juniata River, the property in dispute in this action. I lived one year with my father when he lived on the island. My father lived on the island in the years 1822 and 1823 to the best of my recollection, and I lived with him the first of said years; the last year I worked for him on the island, but had not my home with him. I have seen Peter M'Elcar on that island while I lived there. I saw him at my father's house in 1822, to the best of my recollection; he came there and asked my father who he had rented from, and my father said from Mr. Stiles for Judge Duncan. Peter M'Elcar asked my father how he had it rented, and my father said on the shares. M'Elcar said he should not give Mr. Duncan the grain, for the land was in dispute, and he (M'Elcar) might afterwards come on him for the rent. I don't know that there was much more said before M'Elcar went away; there was a good deal of conversation between them that I do not recollect. I saw my father have a written notice from Peter M'Elcar, warning my father not to pay any more rent to Thomas Duncan or his agent. I don't recollect whether or not the notice stated that the land belonged to M'Elcar. I do not know what has become of that paper. I have part of my father's papers, but this notice is not among them; letters and papers that we thought were of no use we threw away. My brother was the administrator of my father, and he went away, and I was his agent. This notice was not amongst my father's papers at his death, and never came into my hands.

Cross-examined by James M'Cormick, Esq., saving all exceptions

to the notice of the taking of these depositions and the competency of the testimony.

Witness says: I don't know who gave the notice before-mentioned to my father; I never made any search for this notice; I cannot now tell all that was in it, but the substance was as I have stated. I don't think my father paid any attention to this notice, but paid his rent to Mr. Duncan. I saw Peter M'Elcar twice on the island, but only once at my father's house while I lived there.

WM. HOLLAND.

Which said testimony of the said Wm. Holland so by him given, was by him subscribed in my presence after the deposition had been reduced to writing by me in the presence of the witness, and carefully read over to him.

In witness whereof I have hereunto set my hand and seal this 29th day of September, 1840.

ROBERT ELLIOTT, [SEAL.]
A Judge of the Court of Common Pleas in the County of Perry

And now, to wit, September 29th, 1840, at the house of John Kouffer aforesaid, the taking of depositions in this case, wherein the lessee of Isaac M. Fisher is plaintiff, and Jacob M. Haldeman and others are defendants, is adjourned until 8 o'clock to-morrow morning, September 30th, 1840, to meet at the same place.

ROBERT ELLIOTT,
Judge as aforesaid.

And now, to wit, September 30th, 1840, the examination of witnesses was resumed at 8 o'clock in the morning, at the same place.

Samuel Garman, a witness produced on the part of the plaintiff, having been carefully examined and cautioned, and sworn to testify the whole truth, deposes and says:

I was 59 years old last week. I live on Duncan's Island, about 115 or 120 miles from Philadelphia. I know Peter M'Elcar. I moved to the Big Island, the property now in dispute, in the year 1828, and lived there 10 years. I saw Peter M'Elcar on that island while I lived there; he was at my house. He asked me who I rented of; I told him I rented of Stephen Duncan. He (M'Elcar) said he was the owner of the island, and considered us who lived on the island as tenants under him; that conversation took place the first or second year that I was on the island, I think it was the first. I saw him on the island afterwards, but did not see him at my house. My children told me he was there. In the summer of 1839, Peter M'Elcar came to my house; it was before harvest, and wished me to go with him to notify the tenants on the island in dispute. I did not go with him to the houses of the tenants, but took him in a boat, and landed him on the island in dispute.

SAMUEL GARMAN.

Which said testimony of the said Samuel Garman was subscribed by him with his proper name, in my presence, after it was reduced to writing by me, and carefully read over to him in his presence.

Witness my hand and seal, this 30th day of September, 1840.

ROBERT ELLIOTT, [SEAL.]
A Judge of the Court of Common Pleas, of the County of Perry.

Mr. M'Cormick, the counsel of defendants, declined to attend at the examination of Samuel Garman.

ROBERT ELLIOTT,
Judge as aforesaid.

And now, to wit, September 30th, 1840, I, Robert Elliott, a Judge as aforesaid, hereby certify to the Judges of the Circuit Court of the United States, for the Eastern District of Pennsylvania, that the above and foregoing depositions and testimony of James Smith (see pages six, seven, and eight, of this schedule), of John Kouffer (see pages eleven and twelve of this schedule), of William Holland (see pages thirteen and fourteen of this schedule), and of Samuel Garman (see pages sixteen and seventeen of this schedule), were duly and legally taken before me on the days and at the places of which they respectively bear date, and in the manner as I have above certified, which said testimony and depositions were respectively taken by me, for the reason that the said James Smith, John Kouffer, and William Holland reside in the County of Perry, in the State of Pennsylvania, and more than one hundred miles from the City of Philadelphia, the place of trial of the above cause; and for the reason that Samuel Garman resides at Duncan's Island, in the County of Dauphin, and more than one hundred miles from the place of trial aforesaid.

I further certify that due and legal notice of the time and place of taking the said testimony and depositions was given to the adverse party, the defendants in this action, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel after being notified.

Witness my hand and seal.

ROBERT ELLIOTT, [SEAL.]
A Judge of the Court of Common Pleas, of the County of Perry.

In testimony that the within and foregoing depositions and testimony were truly taken by me, as therein set forth, I have hereunto set my hand and seal, at the County of Perry, this 30th day of September, 1840, and have sealed up the schedule containing the said depositions, and directed the same to the Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania, and

written my name across and at the side of my seal, and indorsed on the envelope, Not to be opened except in open court.

ROBERT ELLIOTT, [SEAL.]
One of the Judges of the Court of Common Pleas, in the County of Perry, and State of Pennsylvania.

Pennsylvania, *ss.*

[SEAL.] By the Proprietaries.

Whereas, during the life of our late honored father, William Penn, Esquire, divers orders and warrants were given, as well by himself as by his commissioners of property, to the surveyors-general to survey or cause to be surveyed, to and for his and our use and behoof, the tenth part of all such lands as should be, from time to time, surveyed and laid out in the several counties of our province. And whereas, notwithstanding the said warrants and orders, given as aforesaid, and our own repeated orders and warrants, by ourselves and commissioners of property, to our surveyors-general since, from time to time, they were not executed or observed as they ought to have been, to our great loss and disappointment, and we now judge it necessary to revive and renew the said orders: These are, therefore, to authorize and require you, as soon as conveniently may be, to survey or cause to be surveyed for our proper use and behoof, as well so much of the quantity of five hundred acres, out of every township or tract of five thousand acres, already laid out in our said province, as yet remains vacant, unappropriated, in order that the deficiencies in that respect may be made up to us, as also to survey for *for* our use, the said quantity of five hundred acres in every township and tract of five thousand acres hereafter to be surveyed and laid out in our province. And that in such future surveys so to be made, you take particular care to survey for our use the several unappropriated islands in the Rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in our said *said* province, and make returns from time to time of the same premises into our secretary's office, for our use, agreeable to the said former and this our renewed warrant and orders in that behalf, for which this shall be your sufficient warrant. Witness, James Hamilton, Esquire, lieutenant-governor of the said province, who, in pursuance and by virtue of certain powers and authorities to him for this purpose (inter alia) granted by the said proprietaries, hath hereunto set his hand and caused the seal of the land office to be hereunto affixed, at Philadelphia, the thirteenth day of October, Anno Domini one thousand seven hundred and sixty.

JAMES HAMILTON.

To NICHOLAS SCULL,
Surveyor-General.

In testimony that the preceding is a copy of the original, on file

in the office of the surveyor-general of Pennsylvania, I have hereunto set my hand and the seal of said office, at Harrisburg, this 12th day of October, A. D. 1843.

JAC. SALLADE,
S. G.

(Indorsed as follows:)

1760, October 13. A warrant to survey, for the proprietaries' use, all the islands in the Rivers Susquehanna, Schuylkill, and Delaware.

Returned, &c., 29th December, 1760, in pursuance of the within warrant, an island a little above the mouth of Perkiomy Creek, in ye River Schuylkill, containing 20¾ acres.

Returned, &c., 22d June, 1761, three islands in the River Schuylkill.

Returned, &c., 27th June, 1763, twenty-seven islands in the River Susquehanna, and twenty-five islands in the River Schuylkill.

Returned, &c., 16th May, 1767. } Nine islands in the West
Returned, &c., 19th May, 1767. } Branch, 3220 acres.

Returned the same day, 1275 acres.

Returned, &c., 19th May, an island of 99 acres, 106 perches, called Lafferty's Island.

Returned, &c., 763 acres, May 19th, 1767, called the Highlands.

Returned, &c., 19th May, 1767, 596 acres, called Jerrico, No. seventy-eight.

Returned, &c., 31st July, 1767, two islands in Schuylkill, near the upper end of Barbadoes Island.

6th April, 1768. Three islands in Susquehanna, to J. S.
do. Mathawana Island, in Juniata.
do. Two islands in Schuylkill, opposite French Creek.
do. Two islands in Schuylkill, near Race, opposite Edward's Ford.

April 7th. Two islands at ye junction of Susquehanna and Juniata Rivers.

April 6th. Four islands in Schuylkill, nearly joining each other, opposite Isaac Norris, Esq.

7th April. Two islands in Schuylkill, called Fatland and Cat Fish Islands.

1770, March 19th. One island in the West Branch Susquehanna, and two in Juniata River, 21 a. 22 p.; 5 a. 142 p.; 2 a. 78 p.

1770, July 25. Beech Island, in Susquehanna, 20 a. 104 p.

In testimony that the above is a copy of the indorsements on the original, on file in the office of the Surveyor-General of Pennsylvania, I have hereunto set my hand and the seal of said office, at Harrisburg, this 12th day of October, A.D. 1843.

JAC. SALLADE,
Surveyor-General.

Fees, $1, paid.

John Armstrong to John Lukens, S.-G., Dr.

1763.
March 16th.
May 20th.

1763.

July 12. To accepting the return of a draught round Carlisle, ...			4*l.* 5*s.* 0*d.*
No. 1, an island in the Susquehanna,			2 6
No. 2,	do.	do.	2 6
No. 3,	do.	do.	9 6

I do hereby certify that the above is a copy of an entry in a book marked C, page 9, containing the returns of Deputy Surveyors, remaining in the Surveyor-General's office, of Pennsylvania.

In testimony whereof, I have hereto set my hand and the seal of said office, at Harrisburg, this 16th day of October, 1843.

JAC. SALLADE,
Surveyor-General.

By virtue of a warrant from ye Court at Upland.

Laid out for Thomas Fairman, ye island on Delaware River, in lieu of two hundred acres granted him. Beginning at ye lower point thereof, and running by the same, N. E. by E. 33 perches, thence E. N. E. 84 perches, thence S. W. 82 perches, thence S. W. by W. 108 perches, thence S. S. W. 64 perches, thence W. by S. 96 perches, thence N. W. 186 perches, to ye first-mentioned corner point, containing 196 acres of swamp and marsh.

P. RICHARD NOBLE,
Deputy Surveyor of Upland County.

Surveyed 20th of June, 1680.

The above paper is indorsed, viz.:

20th June, 1680. Island in Delaware, 196 acres, since called Petty's Island. 2d No. nine hundred and seventy-three.

THOMAS FAIRMAN.

Wm. Penn, Proprietary and Governor of ye Province of Pennsylvania, and ye territories thereunto belonging.

At ye request of Captain Lassey Cock, yet I would grant him to take up ye island Mastigacotocan, and ye meadow ground joining to ye land of Passiunk, surveyed for him and company, in the county of Philadelphia. These are to will and require thee forthwith to survey or cause to be surveyed unto him ye said island, and ye meadow to him and company, and make returns thereof into my secretary's office.

Given at Philadelphia, ye 2d ye 2d month, 1684.

WM. PENN.

For THOMAS HOLMES,
Surveyor-General.

The above paper is indorsed, viz., Capt. Cocks, ye meadows, at Passyunk, No. four hundred and twelve. Jo. Hughes.

N. S.

PHILADELPHIA, 15th Nov. 1758.

MR. BERTRAM GALBREATH:

As your brother is over Susquehanna, I must get you to make a regular survey of the island called Jones's Island, containing, as I am told, about fifty acres, more or less, and return it to the honorable proprietaries; yet it may be leased to your father on such terms as shall be agreed on.

Sir, humble servant,
RICHARD PETERS.

The survey, made in pursuance of the above order, is accepted by me, and filed in my office the 13th October, 1760, in order to be returned into the secretary's office, for the use of the proprietaries.

The above is indorsed, viz., A island in Susquehanna. To Mr. Bertram Galbreath, Surveyor, for his brother. Lancaster Co. An island in Susquehanna, survey to the proprietaries.

Pennsylvania, *ss.* By the Proprietaries.

Whereas, divers persons have presumed to destroy the timber, and commit waste on a certain island situate in the River Susquehanna, opposite to a tract of land lying on the east side of the said river, and within the township of Pexton, belonging to John Chambers, and which island is computed to contain one hundred acres, and is commonly called Milligan's Island; and the said persons, without any right whatever or license from us, have taken upon them to clear part the said island; and now we, being desirous to prevent such waste and spoil being made on the said island for the future, and that the same shall be forthwith surveyed and returned for our use, these are, therefore, to will and require you in virtue hereof and of our general warrant for that purpose, dated the . day of 17 , to survey, or cause to be surveyed, the said island, and to make return thereof, under a proper description, into our secretary's office, for our use. And for your so doing this shall be a sufficient warrant. Given under my hand and the seal of the Land Office, by virtue of certain powers from the said proprietaries, at Philadelphia, this twenty-eighth day of March, Anno Domini 1760.

JAMES HAMILTON.

To NICHOLAS SCULL,
Surveyor-General.

The above warrant is indorsed as follows, viz., March 28, 1760.

A warrant to survey an island in the River Susquehanna, called Milligan's Island, for the use of the proprietaries.

Pennsylvania, *ss.* By the Proprietaries.

Whereas, during the life of our late honored father, William Penn, Esquire, divers orders and warrants were given, as well by himself as by his Commissioners of Property to the Surveyor-Generals, to survey or cause to be surveyed, to and for his and our use and behoof, the tenth part of all such lands as should be, from time to time, surveyed and laid out in the several counties of our Province. And whereas, notwithstanding the said warrants and orders, given as aforesaid, and our own repeated orders and warrants by ourselves and Commissioners of Property to our Surveyors-General since, from time to time, the were not executed or observed, as they ought to have been, to our great loss and disappointment; and we now judge it necessary to revive and renew the said orders. These are, therefore, to authorize and require you, as soon as conveniently may be, to survey or to cause to be surveyed, for our proper use and behoof, as well so much of the quantity of five hundred acres out of every township or tract of five thousand acres, already laid out in our said Province, as yet remains vacant, unappropriated, in order that the deficiencies in that respect may be made up to us, as also to survey, for our use, the said quantity of five hundred acres, in every township and tract of five thousand acres, hereafter to be surveyed and laid out in our Province; and that in such future surveys, so to be made, you take particular care to survey, for our use, the several unappropriated islands in the Rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in our said Province, and make returns from time to time of the same premises into our Secretary's Office, for our use, agreeable to the said former and this our renewed warrant and orders, in and that behalf, for which this shall be your sufficient warrant. Witness, James Hamilton, Esquire, Lieutenant-Governor of the said Province, who, in pursuance and by virtue of certain powers and authorities to him for this purpose (inter alia) granted by the said proprietaries, hath hereunto set his hand, and caused the seal of the Land Office to be hereunto affixed, at Philadelphia, this thirteenth day of October, Anno Domini one thousand seven hundred and sixty.

JAMES HAMILTON.

To NICHOLAS SCULL,
Surveyor-General.

The following indorsements are made on the preceding warrant: 1760, Oct. 13th. Warrant to survey for the Proprietaries' use all the islands in the Rivers Susquehanna, Schuylkill, and Delaware. Returned, &c., 29th December, 1760, in pursuance of the within warrant:

An island a little above the mouth of Perkiomy Creek, in ye River Schuylkill, containing 20¾ acres. Returned, &c., 22d June, 1761, 3 islands in the River Schuylkill. Returned, &c., 27th June, 1763, 27 islands in the River Susquehanna, and 25 islands River Schuylkill. Returned, &c., 16th May, 1767, 9 islands in the West Branch. Returned, &c., 19th May, 1767, 3220 acres. Returned, &c., the same day, 1275 acres. Returned, &c., 19th May, an island of 99 acres, 106 perches, called Lafferty's Island, No. seventy-eight. Returned, &c., 763 acres, May 19th, 1767, called Highlands. Returned, &c., 19th May, 1767, 596 acres, called Jerrica. Returned, &c., 31st July, 1767, 2 islands in the Schuylkill, near the upper end of Barbadoes Island. April 6th, 1768, 3 islands in Susquehanna, to J. S. Mathawana Island, in Juniata. April 6th, 2 islands in Schuylkill, opposite French Creek. 6th, 2 islands in Schuylkill, near Reece's, at Edward's Ford. 7th, 2 islands at ye junction of Susquehanna and Juniata Rivers. 6th, 4 islands in Schuylkill, nearly joining each other, opposite Isaac Norris, Esq. April 7th, two islands in Schuylkill, called Fatland and Catfish Islands. 1770, March 19th, 1 island in the West Branch Susquehanna, and 2 in the Juniata River, 21 a. 22; 5 a. 142; 2 a. 78. July 25th, Beech Island, in Susquehanna, 20 acres, 104.

February 11th, 1771.

To WILLIAM MACLAY, Surveyor.

You are hereby directed to survey for the honorable Proprietaries an island in the River Juniata, opposite the late dwelling plantation of John Lyons, where his mother now lives, and make returns on the proprietary's warrant of the 13th day of October, 1760.

Copy sent same day.

JOHN LUKENS,
Surveyor-General.

Mr. LUKENS,

Please to survey for or at the request of John Brunk, a small island in the River Susquehanna, between Shelly's Island and York County, supposed to contain about four acres; and make return into the Surveyor-General's office, in pursuance to the Proprietaries' warrant for all the islands, &c., dated the 13th October, 1760, he paying you for the survey.

By order of the Surveyor-General,
ROBERT DILL.

To CHARLES LUKENS, Surveyor.

Indorsement, viz.: An order to survey an island in the Susquehanna for John Brunk. Copy sent 27th.

Mr. LUKENS,

One John Stansfield applies for an order of survey on an

island three miles below Fort Augusta, supposed to be near 230 acres. I should be glad to know how it is situated as to soil, timber, and meadow, and beg you would order this inquiry to be made by the person whom you give the order of survey to, and you will oblige yours, &c.,

RICHARD HOCKLEY.

November 5th, 1772.

It must be surveyed for Proprietaries, in order to agree.

Indorsed, viz.: Concerning the large island below Fort Augusta.

Sir,—There are two small islands in Susquehanna, just above the mouth of Mahanoy, and a small distance above the island, called Logan's Island, which, it is said, have not yet been surveyed; the one is supposed to contain about sixty, the other about fifty acres; James Packer applys to purchase them, and I desire you will order Mr. McClay to survey and return them for the proprietors, under the general warrant to survey the islands in Susquehanna River, in order that an agreement may be made with the said James Packer for them.

Your humble servant,
JAMES TILGHMAN.

Land Office, April 13th, 1775.

To John Lukens,
Surveyor-General.

Indorsement, viz.: Order to survey two islands in the Susquehanna, for James Packer. 120.

Surveyor-General's Office, 17th May, 1770.

Survey an island in Susquehanna River called Beech Island, and return the same, together with your opinion of the value of the land per acre, into the Surveyor-General's Office, for the use of the hon'ble proprietaries, on their warrant, dated the 13th Oct. 1760, in order to agree with Daniel Shelly for the same.

By order of Richard Hockley, Esq.

To Bartram Galbraith,
Deputy Surveyor.

Copy sent by said Shelly same day.

Indorsement, viz.: Order to survey Beech Island, in the Susquehanna.

Surveyor-General's Office, March 15, 1769.

Friend Thos. Lightfoot:

The bearer, Adam Holman, wants to agree with the proprietaries for a small island in the Schuylkill River, opposite to John Buck-

walter's and Daniel Longnecker; but as there is no draught of the same in the Surveyor-General's Office, you are desired to survey and return the same into the Surveyor-General's Office, in pursuance of the proprietaries' warrant, granted for all the islands in the Rivers Schuylkill and Susquehanna, dated the 13th of October, 1760, Holman paying you the surveying fees.

JNO. LUKENS,
Surveyor-General.

To THOS. LIGHTFOOT,
Surveyor.

Copy sent to Thos. Lightfoot by Adam Holman. No. 43.

SURVEYOR-GENERAL'S OFFICE, 8th August, 1770.

In pursuance of the honorable proprietaries' warrant, dated the 13th October, 1760, locating all the islands in the rivers and creeks in this province for their use, surveyed an island in the River Schuylkill, opposite land of Hugh Roberts, containing 1 acre and 60 perches, and also a sand-bar, containing 20 perches, a little below the said island.

JOHN LUKENS.

Agreed for y^e^ island 1 acre 60 perches, and y^e^ sand-bank to be included in one patent, for £4 and 1*s.* sterling per annum, quit-rent.
RICH'D HOCKLY.

PHILADELPHIA, February 3d, 1775.

The bearer, Mr. Thomas Simpson, applys for two small islands, that generally overflows yearly, opposite his dwelling plantation, containing about two acres each, or perhaps a less quantity, for to erect a shad-fishery, if there can be a proper place made.
Certified by JOHN HARRIS.

MR. KENNEDY:
If Simpson agrees to 50*s.* an acre for these islands, he may have a warrant for them.

The above paper has the following indorsement, viz.: As there is a warrant for surveying all the islands for the proprietaries, if a survey is not already made, the Surveyor-General will direct a deputy surveyor to survey the within-mentioned islands on that warrant, as is usual. 1775, Feb. 7. David Kennedy. Thomas Simpson, application for two small islands. No. 28.

John Gibson, Esq., hath applied for an island in the East Branch of Susquehanna, about 3 miles above Wyaloosing, a little below land by him lately purchased, and opposite, or nearly opposite, to land of Joseph Morris, in the County of Northumberland. Therefore, please to direct the Deputy Surveyor to survey and lay out the same island

on the proprietary warrant of the 29th day of November, 1768, in order that said John Gibson may agree for the purchase of the same.

DAVID KENNEDY,
By order of JOHN TILGHMAN,
Surveyor.

To JOHN LUKENS, ESQ.,
Surveyor-General.

(For draught of Jones's Island, see page 243.)

A draught of Jones's Island, situate in the River Susquehanna, opposite to land of James Galbraith, in Donegal Township, Lancaster County, containing fifty-eight acres and a half, with allowance of six per cent. by measure, &c. Beginning at the lower point, thence extending up ye island N. 40½, W. 25 ps. sd., N. 28½, W. 29 ps., N. 30½, W. 90½ ps., N. 29, W. 20, N. 25, W. 40, N. 31. W. 40, N. 18, W. 33, to the head of the island, N. 50, E. 8 ps. Down the other side, S. 51½, E. 14, S. 49, E. 18, S. 58½, E. 22, S. 53, E. 12, S. 44, E. 20, S. 33, E. 18, S. 30, E. 34, S. 21½, E. 68, S. 11, E. 50. South, 40 ps. to beginning. Surveyed by order of the Proprietaries. Dated the fifteenth of November, 1757.

Pr. BARTRAM GALBRAITH,
By order of WILLIAM GALBRAITH,
D. S.

The above survey is indorsed, viz., No. 6, Draught of Jones's Island, containing 58½ as., for ye Honorable Proprietaries. This survey is accepted in my office for ye use of ye Honorable Proprietaries.

(For plat, see page 244.)

This island, in the Susquehanna River, lies near the mouth of Mahantango Creek, near the west side of the river. It contains 91 acres and allow, has been cleared on, and is called Welch Island. Surveyed the 17th November, 1760, for the Honorable the Proprietarys, by warrant the 13th October, 1760.

Pr. JOHN ARMSTRONG.

Indorsed, viz., Draught of an island in the Susquehanna, No. 8.

Courses and distances of No. 8. Beginning sycamore, east side, near the foot, N. 22, E. 26; walnut, N. 13, E. 12; elm, N. 19, E. 34; walnut, N. 25, E. 92; elm, N. 10, E. 14; walnut, N. 11, W. 52; poplar, N. 4, W. 24; hickory, N. 14, W. 26; hickory, N. 4, E. 28; hickory, N. 48, W. 10; sassafras, N. 66, W. 20; cherry, S. 41, W. 18; elm, S. 5, E. 14; sycamore, S. 33, E. 12; sycamore, S. 17, W. 96; chestnut, S. 5, W. 28; hickory, S. 11, W. 22; hickory, S. 13, W. 32; hickory, south, 102; sycamore, S. 3, E. 30; sycamore,

S. 11, W. 10; walnut, N. 5, E. 16; sycamore, N. 17; E. 24; walnut, N. 20, E. 12, to beginning.

1770, April 10th, John Clark, of Upper Pextang Towp., Lanr. Co., applies for this island, No. 8, and says he has agreed with Mr. Hockley for 30*s.* per acre, and 1 per acre 2 Rt.; one half of which he is to pay before the 1st July next, and int. for the remr.

(For plat, see page 245.)

Agreed for £16 for ye island. One shilling stg. per annum, quit-rent for the whole.

RICHARD HOCKLEY.

Surveyed for the use of the Honorable the Proprietarys, on the 16th of July, 1762. The above-described island, situate in Susquehanna River, opposite the mouth Suatarron Creek, known by the name of Poplar Island, containing eight acres and a half, and the usual allowance of 6 pr. ct. By warrant of the seventh July, 1762. Warrant 13 Oct'r, 1760.

Pr. BARTRAM GALBRAITH.

To JOHN LUKENS,
Surveyor-General.

Indorsed, viz., Poplar Island, No. 7, 8½ as., and allowance.

(For plat, see page 245.)

By virtue of a warrant, dated the 29th day of November, 1768, surveyed the 12th day of December, 1768, unto the Honorable the Proprietaries, the two above-described islands, one of them situate opposite Shickshinning, and the other a little above Shickshinning, on the northeast branch of Susquehanna River, in the new purchase, one of them containing four acres and allowance six pr. cent., the other, six acres and allowance.

P. WM. SCULL.

Robert Wilson desires to purchase the six acres' island above Shickshinning.

Indorsed, viz.: New purchase. Honorable the Proprietaries. 2 Islands, 91.

(For plats, see page 246.)

A draught of an island, situate in the River Susquehanna, known by the name of Mulligan's Island, containing one hundred eight acres and a quarter, with the allowance of six pr. ct. Surveyed for the use of the Honorable the Proprietaries. By virtue of a warrant dated the 13th day of October, 1760.

Surveyed the 22d day of October, 1760. Beginning at the lower

point of the same, and extending up the east side, N. N. E. 161 ps. Sd., N. 17, E. 164 ps. Sd., N. 19, W. 54 ps. to the upper point, thence down the west side, S. 52½, W. 23 ps. Sd., S. 39, W. 104 ps. Sd., S. 10, W. 48 ps. Sd., South 214 to the abovesaid place of beginning.

P. BARTRAM GALBRAITH.

To NICHOLAS SCULL.

Indorsed, viz.: Dft. 108¼ as. and allowance; Island No. 2, 2d; N. 49.

(For plats, see page 247.)

A draught of an island and sandbar in Schuylkill, surveyed for the Hon. Proprietaries, at the instance of John Robe.ts, who wants to purchase the same for a fishery. April 16, 1770.

JOHN LUKENS,
Surveyor-General.

Returned into the Secretary's office, the 8 day of August, 1770, for the use of the Honorable Proprietaries, in pursuance of warrant dated the 13 October, 1760.

Indorsed, viz.: Honorable Proprietaries' Island, in Schuylkill, returned, &c., 8th August, 1770. File with No. 42.

Beech Island, Notes of Survey.

(For plat, see page 248.)

Beginning at a birch tree, on the head of said island, thence down the east side, S. 12, E. 22 ps. south 156 ps. and S. 10, W. 34 ps. to the lower point, thence up the west side of said island, N. 20, W. 30 ps. N. 10, W. 38 ps. N. 2, E. 54½ ps. N. 6, E. 82 ps. and N. 39, E. 12 ps. to the place of beginning, containing 20 acres, 104 ps., and allowance.

Beech Island, surveyed on the 21 July, 1770, containing 20 acres 104 perches, and the usual allowance of six pr. ct.; situate in the River Susquehanna, between Shelly's and Smith's Islands, and above the great Cananagoe Falls. Surveyed for the Honorable the Proprietaries, by their warrant of the 13th October, 1760.

P. BARTRAM GALBRAITH,
Deputy-Surveyor.

To JOHN LUKENS,
Surveyor-General.

July 25, 1770, agreed with Daniel Shelly, for 35*l.* for ye island, and ½*d.* sterling per acre quit-rent.

RICHARD HOCKLEY.

Indorsed, viz., Beech Island, in Susquehanna River, 20 a. 104 ps. Returned, &c., 25 July, 1770.

(For plat, see page 249.)

Courses and distances, West 40, S. 60, W. 14, S. 30, E. 11½, N. 70, E. 49½.

The draught of an island, situate in Juniata River, opposite to where John Lycans lately lived, containing two acres 78 perches, with the usual allowance. Surveyed the 2d day of September, Anno Domini 1769, for the Honorable Proprietaries, in pursuance of a warrant bearing date at Philadelphia, the 13th day of October, Anno Domini 1760.

P. WM. MACLAY,
Deputy Surveyor.

To JOHN LUKENS, ESQ.,
Surveyor-General of Pennsylvania.

Wm. Patterson desires a preference in the sale of this, as he will give as much as any other.

W. M.

Indorsed, viz., Cumberland Island, Juniata, 2, 4. Returned, &c., 19th March, 1770.

(For plat, see page 250.)

The courses and distances: N. 21, W. 37, N. 32, W. 45, W. 9, S. 15, E. 24, S. 30, E. 32, S. 44, E. 33, N. 32, E. 2.

The draught of an island situate in Juniata River, below the mouth of Cohelamus, and opposite Graft Course's land, containing 5 acres, 142 perches, with the usual allowance of six acres per cent., surveyed for the Honorable Proprietaries the 10th day of October, Anno Domini 1768, in pursuance of a warrant bearing date at Philadelphia, the 13th day of October, 1760.

Pr. WM. MACLAY,
D. S.

To JOHN LUKENS, Esq.,
Surveyor-General of Pennsylvania.

N. B. Graft Course, who has improved this island, desires a preference in the purchase of it.

W. M.

Indorsed, viz., Cumberland County. Island in Juniata, 5, 8. Returned, &c., 19th March, 1770.

(For plat, see page 251.)

Courses and distances: Beginning at a small walnut in the lower end of the island, and up the west side of same: N. 13, W. 56, N. 38, W. 36, N. 27, W. 96, N. 18, W. 34, N. 39, N. 20, E. 60, N. 70, E. 4,

S. 78, E. 24, S. 48, E. 35, S. 18, E. 34, S. 11, W. 32, S. 4, E. 30, S. 22, E. 57, S. 14, E. 24, S. 9, E. 50, S. 6, W. 29, S. 26, W. 16, to the beginning.

The draft of an island situate in the River Juniata, about two miles above the mouth of Tuscarora Creek, commonly called Lafferty's Island, in the County of Cumberland, containing ninety-nine acres, one hundred six perches, with the usual allowance proportionate to six per cent. Surveyed for the Honorable Proprietaries the 2d day of December, A. D. 1766, in pursuance of a warrant bearing date at Philadelphia, the 13th day of October, Anno Domini 1760.

WM. MACLAY,
Deputy Surveyor.

To JOHN LUKENS, Esq.,
Surveyor-General of Province Pennsylvania.

Indorsed, viz., Cumberland County. The Honorable Proprietaries, an island in Juniata, 99, 6. Mr. Wm. Maclay applies for the purchase of this island when it is sold. Returned, &c., 19th May, 1767, 106. James Tilghman, Secretary.

(For plat, see page 252.)

Surveyed for the use of the Honorable the Proprietaries, on the 22d day of May, 1771, the above-described island, containing two acres, and 22 perches, and allowance of six per cent., situate in the River Susquehanna, below the Suataro Falls, and the east side of Hill Island, by their warrant of the 13th day of October, 1760.

Pr. BARTRAM GALBRAITH,
D. S.

To JOHN LUKENS, Esq.,
Surveyor-General.

Note. George Gooshorn has improved this island.

B. G.

Thomas Lightfoot's stepson, John Hatton, applies for this island, if not already granted, February 17th, 1776.

JOHN LUKENS.

In testimony that the preceding are true copies of the original papers on file in the Surveyor-general's office, I have hereto set my hand and the seals of said office, at Harrisburg, the 19th day of September, 1842.

JAC. SALLADE,
S. G.

Pennsylvania, *ss.*

In pursuance of a warrant dated the thirteenth day of October, 1760, requiring Nicholas Scull, then Surveyor-general, to survey, for

Measure the next side of the Square

N. 14° E. 17 poles

N. 39° E. 17 poles

N. 49° W. 8 poles

N. 10° W. 9 poles

S. 85° W. 48½ poles

Draw the next side of the Square

the use of the Honorable Proprietaries, the several unappropriated islands in the Rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in the said province, and to make return thereof, from time to time, into the Secretaries' office for their use, I do hereby certify, that there was surveyed by Colonel John Armstrong, in the month of November, 1760, the following islands, situate in the River Susquehanna aforesaid, viz.: No. 1, lying about a mile below Peter's Mountain Narrows, near the west side of the river, called Allen's Island, and containing fifty-eight acres and a half, with allowance of six per cent. No. 2, lying above the mouth of Juniata River, containing five acres and a half, with allowance as aforesaid. No. 3, lying at the mouth of Juniata, near the west side of the river, called Baskins' Island, and containing six hundred and seventy-seven acres, with the usual allowance. No. 4, lying about a mile below Fort Halifax, and within gunshot of the Peach Island, called "Hog Island," containing thirty-eight acres and allowance. No. 5, lying about a half mile below Halifax, called Peach Island, and containing one hundred and ten acres and allowance. No. 6, lying a little above No. 5, in sight of it, called Armstrong's Island, containing twenty-five acres and allowance. No. 7, lying below Berry's Falls, in sight of them, and very near the west side of the river, containing twenty-one acres and a half of an acre, with allowance. No. 8, lying near the mouth of Mahantongo, near the west side of the river, called Welch Island, and containing ninety-one acres and allowance. No. 9, lying below the mouth of Mahantongo, in sight of No. 8, containing forty-one acres and allowance. No. 10, lying opposite M'Kee's, called "M'Kee's Big Island," containing sixty-six acres and allowance. No. 11, lying opposite M'Kee's, a little way above No. 10, called Logan's Island, containing twenty-five acres and a half, with allowance. No. 12, lying a mile above M'Kee's, called "M'Kee's Cow Island," containing fifteen acres and a half, with allowance. No. 13, lying below the mouth of Mahanoy Creek, on the east side, called Weiser's Island, containing two hundred and twenty-four acres and a half, with allowance. No. 14, lying opposite the mouth of Mahanoy Creek, and the end of the Mahanoy Mountain, called "Logan's Island," containing two hundred and thirty-four acres and a half, with allowance. No. 15, situate in the junction of the rivers Juniata and Susquehanna, containing four hundred fifty-five acres and three-quarters of an acre, with allowance.

I do hereby also certify, that there was surveyed by Bartram Galbraith, Deputy Surveyor, the several islands following, situate in the River Susquehanna aforesaid, viz., No. 1, lying on the east side of the river, opposite to the lands of John Carson and Rudy Herr, containing eight acres and allowance; No. 2, lying in said river, called Milligan's Island, containing one hundred and eight acres and a quarter, with allowance; No. 3, lying opposite to the lands of John

Chambers and Thomas M'Kee, containing eleven acres and allowance; No. 4, lying opposite to Harris's Ferry, called Turkey Island, containing thirty-one acres and a half, with allowance; No. 5, called Chesney's Island, containing nine acres and three-quarters, with allowance. Three other islands lying in the said river, were also surveyed by the said Bartram Galbraith, in July, 1762, for the use of the said Honorable Proprietaries, viz., one of them called "Ryce's Island," containing eight acres and a half, with allowance; another called "Sassafras Island," containing six acres and three-quarters, with allowance; and the other, called "Poplar Island," lying opposite the mouth of Suatarrou Creek, containing eight acres and allowance. And I do further certify, that there was surveyed by George Stevenson, Esq., the following islands, in the said river, for the use of the Honorable Proprietaries aforesaid, viz., one island, opposite to John Harris's land, containing forty-four acres and allowance; another, lying a little below the last-described island, containing eleven acres and allowance; another island, lying below the mouth of Yellow Breeches Creek, opposite to Teaf's and Calvert's, containing ten acres and allowance; the other island lying opposite to the land of John Day, called Hill Island, containing two hundred and sixty-eight acres, and allowance of six per cent.

Returned into the Secretary's office, the 27th day of June, 1763.

P. JNO. LUKENS,
Surveyor-General.

I do hereby certify, that the above and foregoing is a true copy of the original return, remaining in the office of the Secretary of the Land Office of Pennsylvania, with the indorsement thereon.

In testimony whereof, I have hereunto set my hand and caused the seal of said office to be affixed at Harrisburg, the 12th day of October, A.D. 1843.

R. M. CRAIN,
Deputy Secretary, Land Office.

Indorsed, 1763, 27 June. Honorable the Proprietaries. 27 islands in the River Susquehanna. Entered.

Pennsylvania, *ss.*

In pursuance of a warrant dated the thirteenth day of October, 1760, requiring Nicholas Scull, then Surveyor-General, to survey, for the use of the Honorable Proprietaries, the several unappropriated islands in the Rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in said province, and to make returns of the same from time to time into the Secretary's Office for their use, I do hereby certify that there was surveyed by James Scull, Deputy Surveyor, in the month of June, 1761, the following islands, situate in the River Schuylkill aforesaid, viz.:

No. 1, lying opposite to the land of Thomas Wright and Isaac Wright, in Berks County, containing one acre and one hundred and thirty perches, and allowance of six per cent. No. 2 and 3. Two islands opposite to the lands of David Longanecker and John Bucknalder, one containing forty-seven perches, and allowance, the other, one acre thirty-three perches, and allowance; situate between the Counties of Philadelphia and Chester. Nos. 4 and 5. Two islands opposite to the lands of Thomas Rook and Adam Holman, one containing twenty-nine perches and a half, the other thirty perches, and allowance, situate between Philadelphia and Chester Counties. Nos. 6 and 7. Two islands lying opposite to the lands of Michael Hoat and Richard Hockley, one of them containing one hundred and fourteen perches and allowance, the other thirty-nine perches and allowance. No. 8. Lying opposite to the lands of Herman Stall and Loventiz Hipple, between the Counties of Philadelphia and Chester, containing nineteen acres and twenty-seven perches, and allowance. No. 9. Lying opposite to the lands of John Swaner and John Linderman, in Philadelphia County, containing one hundred and thirty perches, and allowance. No. 10. Lying opposite to the lands of James Brooks and John Swaner, in Philadelphia County, thirty-eight perches, and allowance. No. 11. Lying opposite the lands of James Brooks and John Swaner, containing one acre and allowance. No. 12. Lying opposite to M'Call's manor and lands of James English, between the Counties of Philadelphia and Chester, containing one hundred and twenty-seven perches, and allowance. No. 13. Lying opposite to the lands of Jacob Shontiz and Martin Orner, between the Counties of Philadelphia and Chester, containing one acre and one hundred and eighteen perches, and allowance. No. 14. Lying opposite to the lands of Thomas May and John Stoner, containing two acres and twenty-seven perches, and allowance. No. 15. Two islands lying opposite to the lands of Joseph Kirby and William Bird, Esq., one of them containing one acre and one hundred and twenty-one perches, and allowance, the other one acre fifty-eight perches and allowance. No. 16. Lying opposite to the lands of John Kirling and Peter Haus, in Berks County, containing one hundred fifty-six perches, and allowance. No. 17. Lying opposite to the lands of Isaac Wiseman and John Honer, in Berks County, containing eighty-two perches and allowance. No. 18. Lying opposite to the lands of Isaac Wiseman and John Stoner, in Berks County, containing two acres and a half, with allowance. No. 19. Lying opposite to the lands of Jonas Yocham and Abraham Wanger, in Berks County, containing five acres and seventy-seven perches, and allowance. No. 20. Lying opposite to the lands of John Wanger and Martin Orner, containing four acres thirteen perches, and allowance. No. 21. Lying opposite to the lands of Jost Horner and Widow Bock, between the Counties of Philadelphia and Chester, containing seventy perches, and allowance. No. 22. Lying opposite to the

lands of Leonard Leboe, Richard Lewis, and Josiah Boones, in the County of Berks, containing six acres ten perches, and allowance. No. 23. Lying opposite to the lands of Jonathan Worrow and John Kurtz, in Berks County, containing one hundred and twenty-four perches, and allowance. No. 24. Lying opposite to the lands of Martin Rickabock and John and Stephen Kurtz, in Berks County, containing two acres and thirty-six perches, and allowance. No. 25. Lying opposite to the land of the honorable proprietaries and Wm. Huttensteiner's land, in the County of Berks, containing fifteen acres eighteen perches, and allowance.

Returned into the Secretary's Office, the 27th day of June, 1763.

Per JOHN LUKENS,
Surveyor-General.

I do hereby certify that the above and foregoing is a true copy of the original return remaining on file in the office of the Secretary of the Land Office of Pennsylvania, with the indorsement thereon.

In testimony whereof I have hereunto set my hand and caused the seal of said office to be affixed, at Harrisburg, the 12th day of October, A.D. 1843.

R. M. CRAIN,
Dep'y Sec'y Land Office.

Indorsed: 1763, 27th June. Hon'ble Proprietaries, 25 islands in the River Schuylkill.

[STAMP.] To all to whom these presents shall come, I, William Curtis, Esquire, Lord Mayor of the City of London, do hereby certify, that on the day of the date hereof, personally came and appeared before me, William Denis and Thomas Mason, the younger, the deponents named in the affidavit hereunto annexed, being persons well known and worthy of good credit, and by solemn oath which the said deponents then took before me upon the Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true to the several matters and things mentioned and contained in the said annexed affidavit.

In faith and testimony whereof, I, the said Lord Mayor, have caused the seal of the office of Mayorality of the said City of London to be hereunto put and affixed, and the letters of attorney mentioned and referred to in and by the said affidavit to be hereunto also annexed. Dated in London the 14th *fourteenth* day of March, in the year of our Lord, one thousand seven hundred and ninety-six.

WINDALE, [SEAL.]

In the Mayor's Court, London. [STAMP.]

William Dunn, of Lincoln's Inn, in the County of Middlesex, gentleman, and Thomas Mason, the younger, master of the brig Diana, of

Philadelphia, in North America, make oath and say, that they were present, and did see John Penn and Richard Penn, in the letters of attorney hereunto annexed named, severally sign, seal, and as their act and deed, in due form of law, execute and deliver the said letters of attorney, and, that the names William Dunn and Thomas Mason, Jr., are of the respective proper handwriting of these deponents, William Dunn, Thomas Mason, Jr.

Sworn at the Mansion, London, the 14th day of March, 1796.
[STAMP.] [STAMP.] W. CURTIS,
Mayor.

To all to whom these presents shall come, John Penn, of Stoke Pogis, in the County of Buck, in the Kingdom of Great Britain, Esquire, and Richard Penn, of Queen Ann Street West, in the parish of Saint Marylebone, in the County of Middlesex, Esquire, brothers and heirs-at-law of John Penn, late of Wimpole Street, in the parish of Saint Marylebone, aforesaid, and since of the City of Philadelphia, in America, Esq., deceased, which said John Penn, of Stoke Pogis, and John Penn, deceased, were the late proprietaries of the province of Pennsylvania, now the State of Pennsylvania, and of the three lower counties of New Castle, Kent, and Sussex, in Delaware, now the Delaware State, being two of the United States of America, send greeting.

Know ye, that for divers good causes and considerations, them, the said John Penn, of Stoke Pogis, and Richard Penn, hereunto moving, they, the said John Penn and Richard Penn, have and each of them hath made, ordained, constituted, and appointed, and in their place and stead put and deputed, and by these presents do, and each of them doth make, ordain, constitute, and appoint, and in their place and stead put and depute, Edmund Physic, of the said City of Philadelphia, in the State of Pennsylvania, Esq., to be their, and each of their true and lawful attorney, for them, the said John Penn and Richard Penn, and in his name, or in the names or name of them, the said John Penn and Richard Penn, or either of them, to sell and absolutely dispose of the entirety of and in all and every the tracts or parcels of land, tenements, quit-rents, and other rents, messuages, buildings, and other hereditaments whatsoever, situate and lying, being in the said Province of Pennsylvania, now State of Pennsylvania, and in the said Delaware State, and every or any of them, of or to which the said John Penn and Richard Penn or either of them are or is seized or entitled, with their rights, members, and appurtenances, and the inheritance thereof in fee simple, either together or in parcels, by public sale, or auction, or private contract, unto any person or persons, or bodies corporate or politic, who shall be willing to become and be the purchaser or purchasers of the said estates, hereditaments, and premises, or any part or parts thereof, for the best price or prices, either in ready money or in money to

be secured to be paid by such future instalments as can, shall, or may be had, obtained, and gotten for the said premises, and he, the said Edmund Physic, shall think proper to accept of, and for the purposes aforesaid, and enter into, and execute all such contracts, agreements, covenants, deeds, conveyances, and assurances in the law whatsoever, as he, the said Edmund Physic, shall think necessary, prudent, or expedient in that behalf, and to appear in any court of justice, or before any judge, register, recorder, or any other person or persons, for rendering the same valid and effectual, for all, every, or any of the purposes aforesaid, and if necessary, to apply to the Legislature of the said United States for an act or acts for the more effectual completing of such sale or sales.

And also to make, sign, execute, and give, in such name or names as aforesaid, good and sufficient receipt or receipts, or other discharge or discharges, unto such purchaser or purchasers, or any other person or persons paying such purchase-money or purchase-moneys, or any part or parts thereof, for the same, or to such money as in such receipt or receipts shall or may be expressed or acknowledged to be received by the said Edmund Physic as aforesaid. And after (deducting all the just and needful expenses attending such sale or sales as aforesaid) to remit the money arising from such sale or sales unto the said John Penn, of Stoke Pogis, and Richard Penn; and they do hereby further authorize and empower the said Edmund Physic to ask, demand, sue for recovery, and receive, all such quantities or quantity of wheat, and all such dues, sum or sums of money, and other demands whatsoever, as are, or now is due, or belonging to them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, or of or from any person or persons whomsoever, for purchase-money, quit-rents, or other rents, issues, and profits of the said tracts of land, hereditaments, and premises, and the arrears thereof respectively, and which shall hereafter become due on account thereof, and in case of default of payment, or detention thereof, or any part thereof, for them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, and in such name or names as aforesaid, to bring, commence, and prosecute any action or actions, suit or suits, in any of the court or courts of law or equity in the State of Pennsylvania, and Delaware State, or elsewhere in America; and to take, use, and employ all other lawful and necessary remedies, ways, or means, either by applying to the Legislature of the said States, or either of them, for any acts for the more easy collection of rents and profits, by distress or otherwise, for the speedy and effectual recovery and recoveries thereof, as to him, the said attorney, shall seem meet. And the said John Penn, of Stoke Pogis, and Richard Penn, do further authorize and empower the said Edmund Physic to remit, release, and discharge all and every the alienation fines due, or belonging to them, and each of them, within the said Delaware State, that were in arrear and payable on or before the 2d day of September,

in the year of our Lord one thousand seven hundred and seventy-five; and also to make composition and agreement respecting the arrearages of the quit-rents, and other rents, issues, and profits remaining alienation fines of the same premises, which are due or belong to the John Penn and Richard Penn, or either of them, according to circumstances and his due discretion. And also they, the said John Penn and Richard Penn, do further authorize and empower the said attorney to appear and plead, to answer and defend all and every such actions and suits whatsoever, both at law and in equity, as at any time hereafter shall or may be brought, sued, commenced, or prosecuted against them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, touching all or any of the matters aforesaid, and generally to do, execute, and perform, or cause to be done, executed, and performed, in the names or name aforesaid, all such further acts, matters, and things whatsoever, which shall be requisite and necessary to be done in and about the premises, and that as fully and effectually, to all intents and purposes, as they, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, could or might do if personally present. And the said John Penn, of Stoke Pogis, and Richard Penn do and each of them doth hereby authorize and empower the said Edmund Physick to receive all and every the sum and sums of money arising from such sale or sales of all or any of the premises, or by payment of the quit-rents or other rents aforesaid, or from the sale of the quit-rents or other rents, and to give receipts and acquittances thereof, and to account with them for the same. And further, they do and each of them doth authorize and empower the said Edmund Physic to appoint, during his pleasure, one or more person or persons under him, in the said States, or either of them, to assist in the collection of the moneys aforesaid. And they, the said John Penn, of Stoke Pogis, and Richard Penn, do hereby respectively ratify and confirm all and whatsoever the said Edmund Physic shall lawfully do or cause to be done and performed in and about the premises by virtue of these presents.

In witness whereof, they, the said John Penn, of Stoke Pogis, and Richard Penn, have hereunto set their hands and seals, the fourteenth day of March, in the year of our Lord one thousand seven hundred and ninety-six.

JOHN PENN. [SEAL.]
RICHARD PENN. [SEAL.]

Sealed and delivered by the above-named John Penn and Richard Penn, being first duly stamped, in the presence of William Dunn, Thomas Mason, Jr., master of the Brig Diana, Richard Johns, mate of the Brig Diana.

The fourteenth day of May, A. D. 1796, before me, Isaac Howell, C. C. Esq., one of the associate judges of Court of Common Pleas, of the County of Philadelphia, came Thomas Mason, the younger,

master of the Brig Diana, of Philadelphia, and Richard Johns, mate of the said brig, and severally made oath and said, that they were present and see John Penn and Richard Penn severally sign, seal, and as their act and deed deliver the within written letters of attorney; that they did also see William Dunn subscribe his name as witness to the execution thereof. And that the names of Thomas Mason, Jr., and Richard Johns, thereunto also subscribed as witnesses to the execution thereof, are *are* of the respective handwritings of them the said deponents, Thomas Mason, Junior. Richard Johns. Sworn and subscribed before me, Isaac Howell. [Seal.] Enrolled the 20th day of May, 1796. I do certify that the above is a true copy of the record of a power of attorney granted by John Penn, of Stoke Pogis, and Richard Penn, unto Edmund Physick, as fully as the same remains on record in the office of the Secretary of the Land Office of the State of Pennsylvania. Enrolled in "Letters of Attorney," Book No. 5, page 332.

In testimony whereof, I have hereunto set my hand and caused the seal of office to be hereunto affixed, at Harrisburg, this 13th day of September, A. D. 1842.

R. M. CRAIN,
Deputy Secretary, Land Office.

Indorsed: Certified copy of power of attorney from John and Richard Penn to Edmund Physick.

This indenture, made the nineteenth day of December, in the year of our Lord one thousand seven hundred and ninety-nine, between the Honorable John Penn, of Stoke Pogis, in the County of Bucks, in the kingdom of Great Britain, Esquires, one of the late proprietaries of Pennsylvania, and of the three lower counties of New Castle, Kent, and Sussex, now the Delaware State, and the Honorable Richard Penn, of Queen Ann Street West, in the parish of Saint Marylebone, in the County of Middlesex, in the kingdom of Great Britain aforesaid, Esquire, brother of the late John Penn, who was the other of the late proprietaries of Pennsylvania, of the lower counties, now State of Delaware aforesaid, by Edmund Physick, of the County of Philadelphia, Esquire, their attorney, constituted by letter of attorney under the hands and seals of the said John Penn and Richard Penn, duly executed, bearing date the fourteenth day of March, one thousand seven hundred and ninety-six, recorded at Philadelphia, in Letter of Attorney book, No. 5, page 332, &c., of the one part, and Thomas Duncan, Esq., of the borough of Carlisle, in the County of Cumberland, in Pennsylvania, counsellor-at-law, of the other part, witnesseth, that the said John Penn and Richard Penn, by their attorney, the said Edmund Physick, for and in consideration of the sum of seven hundred pounds, current money of Pennsylvania, unto the said Edmund Physick, for the use of his said constituents, at or before the sealing and delivering hereof, by the

said Thomas Duncan, well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, released, and confirmed, and by these presents do grant, bargain, and sell, release, and confirm, unto the said Thomas Duncan, and to his heirs and assigns, all that part of Island No. 3, situate in the River Susquehanna, at the mouth of Juniata River, in Pennsylvania, surveyed on the thirteenth day of November, one thousand seven hundred and sixty, in pursuance of a warrant dated the thirteenth day of October, one thousand seven hundred and sixty, which part is now in the possession of Peter M'Elcar, Martin M'Elcar, Daniel M'Elcar, and Jacob M'Elcar, supposed to contain three hundred and fifty acres, be the same more or less, and being the upper part of the said island, which said island has been generally called Baskins' Island, and contains in the whole six hundred and seventy-seven acres and allowance, the lower part thereof being in possession of William Baskins, John Diven, and George Clark.

Together with all and singular the rights, members, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim and demand, whatsoever, of them the said John Penn and Richard Penn, in law, equity, or otherwise, howsoever, of, in, and to the same, to have and to hold the said premises hereby granted, with the appurtenances, unto the said Thomas Duncan, his heirs and assigns, to and for the only proper use and behoof of the said Thomas Duncan, his heirs and assigns, forever. And the said John Penn and Richard Penn, for themselves, their heirs, executors, and administrators, respectively do, by their said attorney, covenant, promise, and agree to and with the said Thomas Duncan, his heirs and assigns, by these presents, that they, the said John Penn and Richard Penn, and their heirs, all and singular the premises hereby granted, with the appurtenances, unto the said Thomas Duncan, his heirs and assigns, against them the said John Penn and Richard Penn, and their heirs respectively, and against all and every other person or persons whatsoever, lawfully claiming or to claim by, from, or under them, or either of them, shall and will warrant and forever defend by these presents. In witness whereof, the said parties have interchangeably set their hands and seals, hereunto dated the day and year first above written.

(For plat, see page 271.)

Island No. 2, containing 5½ acres.

Courses and distances of No. 2, beginning at the upper end.
S. 50, W. 24, to hickory.
S. 27, W. 52, to hickory.
N. 81, E. 13, to mulberry.
N. 41, E. 30, to buttonwood.

N. 26, E. 26, to locust.
N. 7, W. 14, to beginning.
Containing five acres and a half, and allowance. Surveyed 13th of November, 1760, for the Hon'ble the Proprietaries, per warrant of the 13th of October, 1760.

JOHN ARMSTRONG.

Island No. 3, containing 677 acres, and allowance.

This large island in the River Susquehanna, lies at the mouth of the Juniata, contains 677 acres, and allowance of six acres per cent., lies near the west side of the river, was formerly the seat of an Indian town. It is called Baskins' Island. Surveyed 13th November, 1760, for the hon'ble the proprietors.

JOHN ARMSTRONG,
Deputy Surveyor.

In testimony that the above is a copy of the original remaining on file in the office of the Surveyor-General of Pennsylvania, I have hereunto set my hand and the seal of said office, at Harrisburg, this 29th day of May, A.D. 1840.

(Signed) JAC. SALLADE,
Surveyor-General.

[Seal of the Surveyor-General.]

Indorsed: Draught of Island in the Susquehanna, Nos. 2 and 3.
C. A. S.

JOHN PENN, [SEAL.]
RICHARD PENN, [SEAL.]
By their Attorney,
EDMUND PHYSICK, [SEAL.]

Sealed and delivered in the presence of us:
WM. ALEXANDER,
FRED'K BEATES.

Received the day of the date of the above-written indenture of the above-named Thomas Duncan, the sum of seven hundred pounds in specie, being in full consideration-money above mentioned, for the honorable

JOHN PENN and
RICHARD PENN, Esq.
EDMUND PHYSICK.

Witnesses,
WM. ALEXANDER,
FRED'K BEATES.

Cumberland County, *ss.*

Personally appeared before me, the subscriber, one of the Judges of the Court of Common Pleas of Cumberland County, William Alexander, Esq., one of the subscribing witnesses to the within-written indenture; and being duly sworn, according to law, maketh oath, that he was present at the execution and delivery of the said indenture, and saw the within-named Edmund Physick, Esq., sign, seal, execute, and deliver the same as and for this act and deed, and also as and for the act and deed of his constituents, the within-named John Penn and Richard Penn, Esquires; that the name Wm. Alexander, subscribed as a witness thereto, is the proper handwriting of this deponent, and that he saw Frederick Beates, the other witness, also subscribe his name.

WILLIAM ALEXANDER.

Sworn and subscribed, this 21st day of July, 1800, before me,
JOHN MONTGOMERY.

Recorded Sept. 19th, 1807.

Dauphin County, *ss.*

I, Jacob Shell, Recorder of Deeds in and for said County of Dauphin, do hereby certify the foregoing to be a true copy of the same, which is recorded in this office in Deed Book P, vol. 1, page 377, &c.

In testimony whereof I have hereunto set my hand and affixed the seal of said office at Harrisburg, this eighth day of September, A. D. 1842.

JACOB SHELL,
Recorder.

Indorsed: Copy of Deed. John Penn and Richard Penn, by their attorney, Edmund Physick, to Thomas Duncan.

To all to whom these presents shall come.

John Penn, of Stoke Pogis, in the County of Bucks, in the Kingdom of Great Britain, Esq., and Richard Penn, of Queen Anne Street West, in the Parish of Saint Marylebone, in the County of Middlesex, Esq., brother and heir-at-law of John Penn, late of Wimpole Street, in the Parish of Saint Marylebone aforesaid, and since of the City of Philadelphia, in America, Esquire, deceased, which said John Penn of Stoke Pogis, and John Penn, deceased, were the proprietaries of the Povince of Pennsylvania, now the State of Pennsylvania, and of the three lower counties of New Castle, Kent, and Sussex, on Delaware, now the Delaware State, being two of the United States of America, send greeting: Know ye, that for divers good causes and considerations, them, the said John Penn, of Stoke Pogis, and Richard Penn, thereunto moving, they, the said John Penn and Richard Penn, have and each of them hath made, ordained,

constituted, and appointed, and in their place and stead put and deputed, and by these presents do and each of them doth make, ordain, constitute, and appoint, and in their place and stead put and deputed John R. Coats, of the City of Philadelphia, in the State of Pennsylvania, Esq., to be their and each of their true and lawful attorney for them, the said John Penn and Richard Penn, and in his name or in the names or name of them, the said John Penn and Richard Penn, or either of them, to sell and absolutely dispose of the entirety of and in all and every the tracts or parcels of land, tenements, quit-rents, and other rents, messuages, buildings, and other hereditaments whatsoever, situate, lying, and being in the said Province of Pennsylvania, now State of Pennsylvania, and in the said Delaware State, and every or any of them, of or to which the said John Penn and Richard Penn, or either of them, are or is seized or entitled, with their rights, members, and appurtenances and the inheritance thereof, in fee simple, either together or in parcels, by public sale or auction, or private contract, unto any person or persons, or bodies corporate or politic, who shall be willing to become and be the purchaser or purchasers of the said estates, hereditaments, and premises, or any part or parts thereof, for the best price or prices, either in ready money or money to be secured to be paid by such future instalments as can, shall, or may be had, obtained, and gotten for the said premises, and he, the said John R. Coats, shall think proper to accept of and for the purposes aforesaid, to enter into and execute all such contracts, agreements, covenants, deeds, conveyances, and assurances in the law whatsoever, as he, the said John R. Coats, shall think necessary, prudent, or expedient in that behalf, and to appear in any court of justice, or before any judge, register, recorder or any other person or persons for rendering the same valid and effectual for all and every or any of the purposes aforesaid; and if necessary, to apply to the Legislature of the said United Sates, for an act or acts for the more effectual completing of such sale or sales, and also to make, sign, execute, and give, in such names or name as aforesaid, good and sufficient receipt or receipts or other discharge or discharges unto such purchaser or purchasers or any other person or persons paying such purchase-money or purchase-moneys or any part or parts thereof, for the same, or so much money as in such receipt or receipts shall or may be expressed or acknowledged to be received by the said John R. Coats as aforesaid, and after deducting and paying all the just and needful expenses attending such sale or sales as aforesaid, to remit the money arising from such sale or sales unto the said John Penn, of Stoke Pogis, and Richard Penn; and they do hereby further authorize and empower the said John R. Coats to ask, demand, sue for, recover and receive, all such quantities or quantity of wheat, and all such dues, sum or sums of money and other demands whatsoever, as are and is now due or belonging to them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them,

of or from any person or persons whomsoever, for purchase-money, quit-rents, or other rents, issues, and profits of the said tracts of land, hereditaments, and premises, and the arrears thereof respectively, and which shall hereafter become due on account thereof, and in case of default of payment thereof, or detention thereof, or any part thereof, for them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, and in such name or names as aforesaid, to bring, commence, and prosecute any action or actions, suit or suits, in any of the court or courts of law or equity in the said States of Pennsylvania and Delaware, or elsewhere in America, and to take, use, and employ all other lawful and necessary remedies, ways, and means, either by applying to the Legislature of the said States or either of them, for any act for the more easy collection of rents and profits by distress or otherwise, for the speedy and effectual recovery and recoveries thereof, as to him, the said attorney, shall seem meet.

And the said John Penn, of Stoke Pogis, and Richard Penn, do further authorize and empower the said John R. Coats to remit, release, and discharge all and every the alienation fines due and belonging to them and each of them, within the said Delaware State, that were in arrear and payable on or before the second day of September, in the year of our Lord one thousand seven hundred and seventy-five, and also to make composition and agreement respecting the arrearages of the quit-rent, and other rents, issues, and profits, and remaining alienation fines of the same premises, which are due, or belong to the said John Penn and Richard Penn, or either of them, according to circumstances and his due discretion. And also they, the said John Penn and Richard Penn, do further authorize and empower the said attorney to appear and plead, to answer and defend all and every such action and suits whatsoever, both at law and in equity, as at any time hereafter shall or may be brought, sued, commenced or prosecuted against them, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, touching all or any of the matter aforesaid, and generally to do, execute, and perform, or cause to be done, executed, and performed, in the names or name aforesaid, all such further acts, matters, and things whatsoever, which shall be requisite and necessary to be done in and about the premises, and that as fully and effectually to all intents and purposes as they, the said John Penn, of Stoke Pogis, and Richard Penn, or either of them, might or could do if personally present. And they, the said John Penn, of Stoke Pogis, and Richard Penn, do and each of them doth hereby authorize and empower the said John R. Coats to receive all and every the sum or sums of money arising from such sale or sales of all or any of the premises, or by payment of the quit-rents, or other rents aforesaid, or from the sale of the quit-rents or other rents, and to give receipts and acquittances therefor, and to account with them for the same. And further, they do and each of them doth authorize and empower the said John R. Coats to appoint,

during his pleasure, one or more person or persons under him, in the said States, or either of them, to assist in the collection of the moneys aforesaid, and they, the said John Penn, of Stoke Pogis, and Richard Penn, do hereby respectively ratify and confirm all and whatsoever the said John R. Coats shall lawfully do or cause to be done and performed in and about the premises by virtue of these presents. In witness whereof, they, the said John Penn, of Stoke Pogis, and Richard Penn, have hereunto set their hands and seals the twenty-seventh day of November, in the year of our Lord one thousand eight hundred.

JOHN PENN, [SEAL.]
RICHARD PENN. [SEAL.]

Sealed and delivered by the said John Penn and Richard Penn, in the presence of D. A. Haurott, Lincolnshire, Thomas Emerson, Lord Mayor's Court, London.

To all to whom these presents shall come, I, Sir William Staines, Knight, Lord Mayor of the City of London, do hereby certify that on the day of the date hereof, personally came and appeared before me, John Penn and Richard Penn, Esquires, the constituents in the foregoing written letter of attorney named, and acknowledged the same to be their and each of their act and deed, and desired the same may be recorded as such.

In faith and testimony whereof, I, the said Lord Mayor, have hereunto set my hand, and caused the seal of the office of Mayoralty, of the said City of London, to be hereunto affixed. Dated in London, the twenty-seventh day of November, in the year of our Lord one thousand eight hundred.

WM. STAINES, [SEAL.]
Mayor.

Recorded the 20th day of April, 1801.

I, Richard S. Lloyd, Recorder of Deeds, &c., for the City and County of Philadelphia, do hereby certify the above and foregoing to be a true copy of a certain instrument of writing, remaining of record in my office, in Letter of Attorney Book E. F., No. 2, page 90, &c.

Witness my hand and seal of office, this 23d day of Oct. A. D. 1843.

For RICHARD S. LLOYD,
JOSHUA SPERING.

Indorsed: John Penn et al. to John R. Coats.

This indenture, made the twelfth day of July, in the year of our Lord one thousand eight hundred and three, between the Honorable John Penn, of Stoke Pogis, in the County of Bucks, in the

Kingdom of Great Britain, Esq., of the late Proprietaries of Pennsylvania, and of the three lower counties of New Castle, Kent, and Sussex, now the Delaware State, and the Honorable Richard Penn, of Queen Ann Street West, in the Parish of Saint Marylebone, in the County of Middlesex, in the Kingdom of Great Britain, aforesaid, Esquire, brother of the late John Penn, who was the other of the late Proprietaries of Pennsylvania, and of the lower counties, now State of Delaware, aforesaid, by John R. Coats, of the City of Philadelphia, in the State of Pennsylvania, Esquire, their attorney, duly constituted and authorized by letters of attorney, under the hands and seals of the said John and Richard Penn, legally executed, bearing date the twenty-seventh day of November, in the year of our Lord one thousand eight hundred, and attorney in fact of the said Richard Penn, by substitution of Benjamin Chew, Junior, attorney in fact of the said Richard Penn, by letters of attorney, of the thirteenth of December, in the year of our Lord one thousand eight hundred and two, with power of substitution, who, on the fifth day of July, instant, substituted the said John R. Coates of the one part, and Thomas Duncan, Esquire, of the Borough of Carlisle, in the County of Cumberland, in Pennsylvania, counsellor at law, of the other part, witnesseth, that whereas, Edmund Physick, on the nineteenth day of December, in the year of our Lord one thousand seven hundred and ninety-nine, as attorney in fact for John Penn and Richard Penn, did grant, bargain, and sell unto the said Thomas Duncan and his heirs, a certain part of the Island No. 3, situate in the Susquehanna River, at the mouth of Juniata, in Dauphin County, in Pennsylvania, then supposed to be in possession of Peter M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Jacob M'Elcar, and to contain three hundred and fifty acres, which said island was surveyed on the fifteenth day of November, in the year of our Lord one thousand seven hundred and sixty, in pursuance of a warrant, dated the thirteenth day of October, in the year last aforesaid, called and known by the name of Baskins' Big Island; and whereas the said island, on actual mensuration, made by William Alexander, Esq., the said island contains in the whole six hundred and ninety-five acres and thirty-two perches; and the said Edmund Physick, on the thirteenth day of June, in the year of our Lord one thousand eight hundred, did covenant to sell the remainder of the said island to the said Thomas Duncan, containing three hundred and forty-five acres and thirty-four perches, at the sum of forty shillings per acre: Now this indenture witnesseth, that the said John R. Coats, attorney in fact as aforesaid, for and in consideration of the sum of six hundred and ninety pounds, seven shillings, and sixpence, current money of Pennsylvania, unto the said John R. Coats, for the use of his said constituents, at or before the sealing and delivery hereof, by the said Thomas Duncan, well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained and

sold, released and confirmed, and by these presents do grant, bargain, and sell, release, and confirm unto the said Thomas Duncan, and to his heirs and assigns, the three hundred and forty-five acres, and thirty-four perches, more or less, being the residue or remainder of the aforesaid Island No. 3, which island is situated in the River Susquehanna, at the mouth of Juniata, and was formerly in possession of William Baskins, George Clark, and John Divens, in Dauphin County, in the State of Pennsylvania, together with all and singular, the rights, members, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand, whatsoever, of them the said John Penn and Richard Penn, in law, equity, or otherwise howsoever, of, in, and to the same. To have, and to hold the said premises hereby granted, with the appurtenances, unto the said Thomas Duncan, his heirs and assigns, to and for the only proper use and behoof of the said Thomas Duncan, his heirs and assigns forever; and the said John Penn and Richard Penn, for themselves, their heirs, executors, and administrators, respectively do, by their said attorney, covenant, promise, and agree, to, and with the said Thomas Duncan, his heirs and assigns, by these presents, that the said John Penn and Richard, and their heirs, all and singular the premises hereby granted, with the appurtenances, unto the said Thomas Duncan, his heirs and assigns, against them, the said John Penn and Richard Penn, and their heirs respectively, and against all and every other person or persons whatsoever, lawfully claiming, or to claim by, from, or under them, or either of them, shall and will warrant and forever defend, by these presents.

In witness whereof, the said parties have interchangeably set their hands and seals thereunto, dated the day and year first above written.

JOHN PENN, [SEAL.]
RICHARD PENN. [SEAL.]

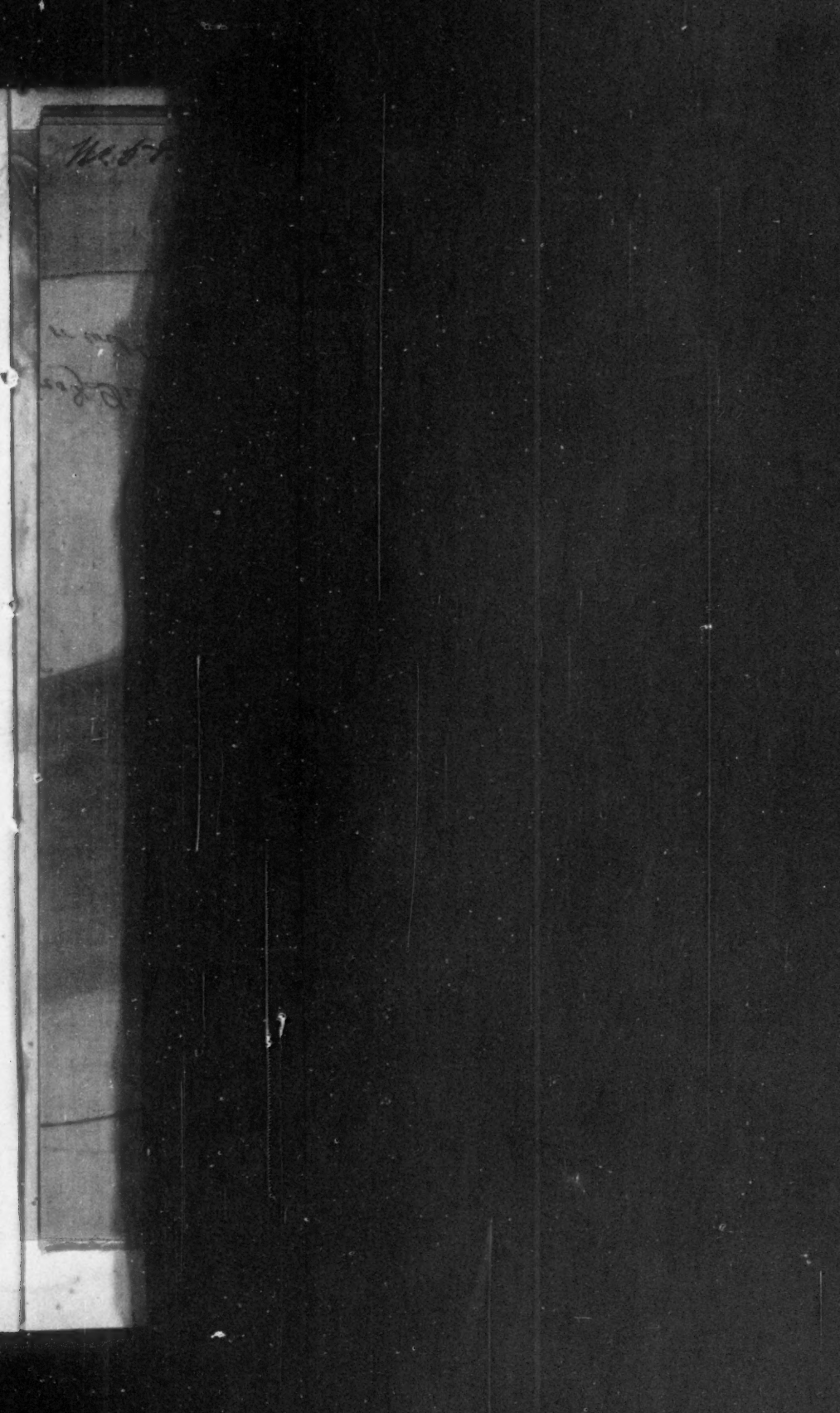
By their attorney,
JOHN R. COATES. [SEAL.]

Sealed and delivered in the
presence of us,
JESSE DUNCAN.

Received, the day of the date, within written indenture of the within-named Thomas Duncan, the sum of six hundred and ninety pounds, seven shillings and sixpence, the consideration within mentioned.

JOHN R. COATES.

Witness,
JESSE DUNCAN.



(For plat, see page 284.)

The above is a draught of a large island in the River Susquehanna, at or near the mouth of the River Juniata (commonly called Baskins' Big Island), in the County of Dauphin, containing six hundred and ninety-five acres, and thirty-two perches, and allowance of six per cent. for roads, &c., surveyed for Thomas Duncan, Esq., in right of the Honorable John Penn and Richard Penn, Esqs., the 15th day of January, in the year of our Lord one thousand eight hundred (1800), by

WILLIAM ALEXANDER.

Contents: A. Survey for Baskins and Diven, 254 acres, neat. B. Survey for George Clark, 155 acres, neat.

Indorsed: January 15th, 1800. Draught of Baskins' Big Island, 695 acres, 34 perches, and allowance.

Cumberland County, *ss.*

Before me, the subscriber, one of the judges of the Court of Common Pleas of the said county:

Personally appeared James Duncan, of the borough of Carlisle, Esq., and made oath that he was well acquainted with the late Jesse Duncan, the subscribing witness to the within deed, and that, from a perfect knowledge of the handwriting of the said Jesse Duncan, he verily believes that the name Jesse Duncan, attesting this deed as a subscribing witness, is of the proper handwriting of the said Jesse Duncan; this deponent, on his oath, declares that he has understood and believes, that the said Jesse Duncan has since departed this life; and this deponent further saith, that he is well acquainted with John R. Coates, the attorney in fact of the grantors, and that he is well acquainted with his handwriting, and believes the name John R. Coates, subscribed to this deed, is the proper handwriting of the said John R. Coates.

JAMES DUNCAN.

19th Sept. 1807.

Before JOHN CRUGH.

Recorded Sept. 19, 1807.

Dauphin County, *ss.*

I, Jacob Shell, recorder of deeds, &c., in and for said County of Dauphin, do hereby certify the foregoing to be a true copy of the same, taken from the record, which is recorded in deed book P, vol. 1, page 379, &c.

In testimony whereof, I have hereunto set my hand and seal of

said recorder's office, at Harrisburg, this eighth day of September, A.D. 1842.

JACOB SHELL,
Recorder.

Indorsed: Copy of a deed. John Penn and Richard Penn, by their attorney, John R. Coates, to Thos. Duncan.

Deposition of Thomas Brown.

In the District Court of Dauphin County, of May Term, 1823.

Dauphin County, *sct.*

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 191.

And now, to wit, on the 27th day of November, 1826, rule to take depositions on the part of the defendants, ex parte, on ten days' notice.

The justice of the peace, or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state, on the deposition, the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record, the 27th day of November, 1826.

For OBED. FAHNESTOCK,
Prothonotary.
C. A. SNYDER.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 191.

Rule to take Depositions, &c.

Sir: Please to take notice, that it is intended, on the part of the defendants in the above suit, to take the deposition of witnesses before Elisha Doyle, Esq., at his office in Hanover Street, in the Borough of Carlisle, Cumberland County, or before some other competent authority at said place, on Friday, the eighth day of December, 1826, between the hours of ten in the forenoon, and three in the afternoon of said day, when and where you are requested to attend, and cross-examine the witnesses, if you think proper. And which

depositions are intended to be read in evidence on the trial of the above cause.

THOS. ELDER,
Attorney for Defendant.

SAM'L DOUGLASS, ESQ.,
Attorney for Plaintiff, in above suit.

Nov. 27th, 1826.

1826, Nov. 27. Served the original notice, of which the above is a copy, on Samuel Douglass, Esq., attorney for plaintiff, personally, by handing the same to him in court-house.

T. E.

In the District Court of Dauphin County, of May Term, 1823.

Rule to take Depositions.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFER, JOHN HOLLAND, ROBT. BOWER, and THOS. DUNCAN, Esq. } No. 191.

Cumberland County, *ss.*

In pursuance of the above rule, personally appeared before the subscriber, one of the justices of the peace in and for the County of Cumberland aforesaid, Thomas Brown, a witness on behalf of the defendants, and he being duly sworn according to law, saith as follows: I came to live with Mr. Duncan as his agent, in May, 1802; I had the care of all his real estate, selling of his grain, and the entire management of the business connected therewith. The Big Island in Dauphin County was part of the estate delivered to my care; it was the first part I visited; the first business I done was transacted there. I went to the Big Island in the latter part of June, 1802, by direction of Mr. Duncan, to carry over a sum of money and pay it to a man whose name, I think, was William Baskin, for his right to the possession of the Big Island, under the M'Elcars, and for the crop then in the ground. Baskin had given up possession of the island to Mr. Duncan before this time, and had removed from the same, and a man by the name of Potter was then living on the island as the tenant of Mr. Duncan; Baskins was to me on the island, as I had understood from Mr. Duncan. When Baskins met me on the island, he told me he had come to get the money Mr. Duncan was to send to him; I paid him the money; it was between eighty and ninety dollars. He was perfectly satisfied with the money he received, and gave me his receipt in full, which I delivered to Mr. Duncan; he said that Mr. Duncan was a gentleman, and that that was his bargain. When I came to live with Mr. Duncan, I found him in the quiet and full possession of the Big Island.

The island was divided into three farms: the farm at the Point, the middle farm, and the farm at the head of the island. Potter lived on and worked the farm at the Point, under a lease from Mr. Duncan, and delivered me, as his agent, the one half of the grain that was raised on the place. Old Mr. Miller, a Mennonist, and his family, lived on the middle farm, and worked the same under a lease from Mr. Duncan, on like terms with Potter. Martin Miller, a son of the old man, lived at the head of the island, under a like lease. These tenants all lived on their respective farms under leases from Mr. Duncan, and continued to live there three years. After Potter went away, Myers came to that farm under a lease from Mr. Duncan, and remained there during the time I continued the agent of Mr. Duncan, and delivered me the one half of the grain and crops that were raised on the farm during the whole of that period. The middle farm, on which the Millers lived, was rented for one year, after they left it, to a yeoman, whose name I do not now recollect; he held it on like terms with the Millers. After he left it, one Mills came into possession of the middle farm, as a tenant under Mr. Duncan. John Douglass had rented the farm from Mr. Duncan, and put Mills, his brother-in-law, into possession. Mills lived there a year, and after that time, the farm was worked by Douglass, while I continued to be agent. George Clark worked the upper farm, as the tenant of Mr. Duncan, one year, on like terms with the others; and after he left that, Douglass came to the head farm and remained there three years. When I first went to the island, in 1802, there were several persons living in huts on different parts of the island. George Clark lived on the Branch, his son, John Clark, lived up by the graveyard; Robert Hewitt lived up the Branch; John Martin lived on the bank of the Susquehanna River, in a little hut. These men made their living by fishing, gunning, and laboring; they farmed none, unless one of Mr. Duncan's tenants would by permission occasionally give them a field, to work on the shares; when that was the case, they always rendered me the half of the crop. John and George Clark moved off the Big Island in the spring of 1803. They went away in debt to Mr. Duncan; the huts in which they had lived were pulled down; they claimed no right, as far as I understood, while they lived in those huts, either to the huts themselves, or to any part of the Big Island; this I understood both from Martin and Mr. Duncan. Clark plead with me to let him remain in his hut until the ensuing spring, and he was permitted to do so with consent of Mr. Duncan. The farmers complained that so many living on the island would overstock it with cattle and hogs. Mr. Hewit and Mr. Martin applied to me to intercede with Mr. Duncan to let them stay in their huts. I did so, and they were permitted to remain under Mr. Duncan. They claimed no right, otherwise than by privilege from him. Martin remained about six years, and Hewit remained while I was the agent of Mr. Duncan; I left him there. I knew Thomas M'Elcar

when I saw him. Martin M'Elcar I knew intimately well. Martin M'Elcar lived in Petersburg, and frequently done work for me as a laboring hand, especially in fishing time; he was there every spring in fishing season, perhaps for five or six weeks at a time. I, as the agent of Mr. Duncan, gave him the management of the seine; he mended the seine, and kept it in order, but fished none. I, as the agent of Mr. Duncan, drew the one half of the fish, and the other half went to the hands. Martin M'Elcar drew an equal share with the other fishermen. He also assisted as a laboring hand in procuring and boating stone and lime for the barn, and frequently done other laboring jobs; he was hired like another laborer, and received his wages from me.

In June, 1802, the wives of Thomas and Martin M'Elcar came to Carlisle and called upon me for something that Mr. Duncan had promised them at the time of the agreement for the right to the island. I went with them to Mr. Duncan, and he told me to go over to Mr. Moore's store and buy them such dresses as they pleased to take, and I did so; they got the dresses, and I brought the bills of them to Mr. Duncan. In the course of a few weeks after this, I cannot say how long, some woman, who called herself Peter M'Elcar's wife, came to my house; she complained that Mr. Duncan had been so good to the rest, and that she had got nothing. I took her to Mr. Duncan's office; when we went there she went on very high, and used rough language, stating that he had been so kind to the rest, and she had got nothing. Mr. Duncan told me to take her over to Mr. Moore's store, let her choose what she wanted, and never to let him see her ugly face again. She was then far advanced in pregnancy. I took her over to the store, and she got a dress for herself and some calico, also some muslin and flannel. In 1802, when I first went to the island, there were no fences only the one running up the Susquehanna, the others were brush fences. There was no house worth anything on the farm except a log-house on the middle farm; there were no barns. There were no wells, when Mr. Duncan got possession, except one that had sunk; in the second or third year after he got it, he dug two wells and planted a thousand trees of grafted fruit, dividing them into three orchards, one on each farm; he had rails made at the rate of from a thousand to fifteen hundred a year, for the use of the farms on the island. I was with Mr. Duncan, as his agent, six years and nine months. During that time I was on the island more than fifty times every year. In the spring of the year, I would generally be there from five to six weeks, during fishing seasons. I never knew of any disturbance of the possession of Mr. Duncan, nor of any claim, by any man, to any part of the island. I never heard of any claim to it until I heard it from Mr. Duncan, when I went to Harrisburg on this suit. I had frequent conversations with Martin M'Elcar, and he never complained of any ill treatment from Mr. Duncan, but on the contrary, said that Mr.

Duncan had always treated him like a gentleman. He did not, in any of those conversations, ever set up any claim to any part of this island.

S. Douglass appears as attorney for the plaintiff, and objects to each and every part of the foregoing deposition, and to the irrelevancy and illegality of the same, and of taking the same, and reserving the right to make all and every legal objection to the same, and every part thereof, and to the taking of the same, puts the following questions:

J. D. Mahon, Esq., protests against the above reservation, so far as it respects the right of the party to take those exceptions, which his appearance and cross-examination cures.

Q. Where did you live after you were employed by Mr. Duncan, as his agent, in 1802, during your agency?

Answer. I always lived in Carlisle during my agency, which commenced in May, 1802.

Q. Were you present when Mr. Duncan first got possession of the island; and if yea, from whom did he get possession?

Answer. I was not present; know not of whom he got possession; he was in possession when I came there.

Q. Do you know who lived on that island before May, 1802?

Answer. I do not.

Q. Were you present, or have you knowledge of the fact, that Baskin purchased the M'Elcars' right to that island?

Answer. I was not present, and have no knowledge of it; and I have no knowledge of anything that took place relative to the Big Island, before May, 1802.

Q. Have you ever known Peter M'Elcar, the plaintiff, to live on the Big Island?

Answer. I never did.

Q. Were you present at the first leasing of the island by Mr. Duncan, to those persons whom you have mentioned as living in the huts or on the farms on the island?

Answer. I was not. I don't know how the persons came there that were living in the huts; they were there before I came there, but I know how they lived after I did come there, and that it was by the permission and charity of Mr. Duncan.

Question. Were you present, when Baskins delivered up the possession of the island to Mr. Duncan?

Ans. No, I was not.

THOMAS BROWN.

Sworn and subscribed, between the hours of ten and two o'clock, Friday, the 8th of December, A.D. 1826.

ELISHA DOYLE.

Indorsed: 72, December T. 1826. M'Elcar *v.* Wm. Elliot et als. Habeas Corpus, 191, May Term, 1823. Peter M'Elcar *v.* William Elliot, &c. Deposition filed, 9th, 1826, December.

Dauphin County, *set.*

In the Circuit Court of Dauphin County, of December Term, 1826.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ.

And now, to wit, on the nineteenth day of January, 1827, rule to take depositions on the part of the defendants, of ancient, infirm, and going witnesses, ex parte, on ten days' notice.

The Justice of the Peace or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state on the deposition the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record the 19th day of January, 1827.

For OBED. FAHNESTOCK,
Prothonotary,
C. A. SNYDER.

In the Circuit Court of Dauphin County.

PETER MCELCAR
v.
WILLIAM ELLIOT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN.

Before me, the subscriber, one of the Justices of the Peace of Pennsylvania Court, personally appeared William Irwin, a witness adduced on the part of defendants, who being duly sworn according to law, doth depose and say, that the several orders marked A, B, C, D, E, were paid to the several persons in whose favor they were drawn, and paid by the said Thomas Duncan to me (Mr. Duncan, my brother Jacob and I, bought Wm. Baskins' crop; there was no crop in the upper part of the island).

S. Douglas appears for the plaintiff as attorney, and objects to the legality of the foregoing deposition, and to the taking of the same, and reserves the same protestation to the legality and takings of the subjoined depositions.

Sworn and subscribed, February 12th, 1827.

WM. IRWIN.

Thomas Duncan appearing on behalf of defendants, and Samuel Douglass for plaintiff, before me, at the house of John Boder.

FRED. SPECK.

And Martin Miller, likewise a witness adduced on behalf of the defendants, being duly affirmed, says, that the lease Thomas Duncan to Jacob and Martin Miller, and mark Martin Miller, is the mark made by this deponent to said lease; and that he moved on to the Big Island, the head thereof, in pursuance of said lease, about the first of April, 1802; that he moved to that part occupied by the M'Elcars; Jacob Miller, his brother, moved to the middle part, occupied by one George Clark; John Potter moved the lower part, occupied by Wm. Baskins. Daniel M'Elcar employed a little house for me, and give possession, last of May, or first of June, 1802, Daniel and Jacob M'Elcar left the island, and got possession of the whole of M'Elcar's part; my brother Jacob got possession of Geo. Clark's part about the first of April, 1802; John Potter got possession of Wm. Baskins' part some time in April; my brother and I got quit-possession; neither he nor I was ever disturbed. I remain on the upper place for three years, and moved to the middle part, and continued for one year, and one Douglass went into possession of it.

The buildings on the upper part was not worth more than two hundred, to his opinion; the fences was poor, and not fit to keep out cattle; some of the fields was grown with sprouts; the middle house and barn of Clark's was better than the upper ones; the fields were in better order than upper ones. Baskins' house and barn were better than the upper ones; said house was old, but better than the upper one; there was but one well on the island; there was a running stream on the Branch side of the island; there was two wells dug by direction of Judge Duncan, one at Clark's, and the other at Baskins'; there was three orchards planted by Judge Duncan, while I lived on the island.

Cross-examined by Mr. Douglass.

I do not remember that any more of the M'Elcars lived on the island except Daniel and Jacob when I went there, and they were the brothers of Peter M'Elcar, the plaintiff in this suit. I do not know who Daniel and Jacob M'Elcar held possession under at the time I came there. I was not present when my brother Jacob and John Potter got possession of the island.

his
MARTIN × MILLER.
mark.

Sworn and subscribed, Feb'y 13th, 1827, before me,

FRED'K SPECK.

N.B. The words in crotchets, to wit: Mr. Duncan, my brother

Jacob, and I, bought Wm. Baskins' crop; there was no crop on the upper part of the island,—in William Irwin's deposition, and part of Martin Miller's deposition, and so to be considered.

S. DOUGLASS,
Attorney for Plaintiff.

Robert Clark, a witness also adduced on behalf of defendants, being duly sworn, says: I have known the Big Island for about thirty years. When I first knew it, old Patrick M'Elcar and his sons Thomas, Daniel, Jacob, Peter, the plaintiff, and Martin, lived at the head of the island; and after Patrick's death, his sons, all except the plaintiff, who some time after moved to the State of New York, continued to live on it till eighteen hundred and two. Geo. Clark and John Diven lived on the middle part of the island, and Wm. Baskins lived on the lower part till eighteen hundred and two, and it has been occupied by tenants of Mr. Duncan since that time. I had conversation with Daniel and Martin M'Elcar between 1800 and 1802, and they said they had got more money from Mr. Duncan than they had expected, and said he had treated them extremely well. After 1802, I saw Martin M'Elcar go into Carlisle to see Mr. Duncan, and he told me he had got money from him, and a full dress for his wife. Martin mended the seine and fished for Mr. Duncan at the head of the island. After that, and some time after 1802, Peter came down and moved his family to some part of the country, and since that he moved up to Lewistown, and, to the best of my knowledge, he was employed by Mr. Duncan since that in getting stone for the new house. Three orchards were planted by Mr. Duncan after he got possession of the island, containing in the whole about a thousand trees. I assisted in planting those orchards, and while there I think Martin M'Elcar assisted also at the orchards. George Clark and John Diven came to me in May, 1802, and asked me if I would not buy there, or move to the islands they had; that they were about leaving this country, and if I would buy the island they would have all their business settled and go away. Said they had fixed all their business with Mr. Duncan, and received all their money in specie before it was due, and if I would buy their islands they would go away and wish us all good fortune. I bought their islands. In conversation with Wm. Baskins, he said he had bought land in New York, and had done better than if he had stayed on the island, and had got all his money in hard money from Mr. Duncan. George Clark lived on the Little Island under Mr. Duncan, and after this lived on the head of the Big Island, under Mr. Duncan. (Receipt in the receipt-book of Mr. Duncan is now produced, signed by George Clark) and is the handwriting of the said George Clark (marked G); another receipt in said book also produced, marked (H), signed by said George Clark, is also the handwriting of the same George Clark. A letter now produced, signed A Squirrel Hunter,

marked (I), is also the handwriting of said Geo. Clark. A letter from Martin M'Elcar, signed (K), is also the handwriting of Martin M'Elcar. Martin M'Elcar's receipt, marked (L), is also the handwriting of Martin M'Elcar. A receipt, marked (M), in Mr. Duncan's receipt-book, signed Thomas M'Elcar, or Carr, is also in the handwriting of Thomas M'Elcar, and he was in the habit of writing his name sometimes Carr and sometimes M'Elcar.

Cross-examined by Mr. Douglass, who reserves the right of objecting to all and every part of this and the foregoing deposition.

I do not know that I was on the island when Mr. Duncan got possession of any part of it.

ROBERT CLARK.

Sworn and subscribed, Feb'y 13th, 1827, at the house of John Boden, in the presence of Thomas Duncan, who appears for defendants, and Samuel Douglass, who appears for plaintiff, before me.

FRED'K SPECK.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUPHER, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ.

Cumberland County, *ss.*

In pursuance of a rule to take depositions in this case, personally came before me, the subscriber, one of the justices of the peace in and for said county, Col. Robert Thompson, who on his oath, duly administered according to law, doth depose and say, that he thinks it is thirty-six years past since he knew the Big Island. The principal settlers on the island were, George Clark, Wm. Baskins, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar; Clark, Baskins, and Diven, resided there from the time deponent knew the island, until about the year 1802. The said Thomas, Jacob, Daniel, and Martin M'Elcar, resided there after their father's death, for some time. The said island, since 1802, has been constantly in the possession of Thomas Duncan, Esq. Deponent built a house for Mr. Duncan there, about the year 1811. It was built on the Middle Place, formerly the place of George Clark; Peter M'Elcar deponent knew to be in the neighborhood of said island about the year 1812 or 1813; at that time the said Peter was among the hands that were working at the new house on the small island; and there were stone quarried for said house on the Big Island. The buildings on the Big Island were poor from the time deponent knew it, until the year 1802. The buildings on the

M'Elcars' part were not worth, in all, one hundred dollars; they consisted of a cabin-house and barn, of round logs. The buildings on Clark's part were not good, but they were something better than the others; the buildings on Baskin's and Diven's part were worth but little more than M'Elcar's, not above one hundred and fifty dollars each at most. The fences on the whole island were generally bad.

Samuel Douglass, Esq., appears as counsel for plaintiff, and objects to the legality of all and every part of the foregoing deposition, and to the authority for taking of the same, and reserves the right hereafter so to object. The letter signed A "Squirrel Hunter," marked I, deponent believes to be the handwriting of George Clark. Deponent went to school to him.

ROBERT THOMPSON.

Sworn and subscribed at the house of James Bell, in the Borough of Carlisle, the 16th February, A.D. 1827, before me,

ELISHA DOYLE.

At the same time and place, personally appeared W. A. Irvine, who being duly sworn saith, that some time in January, 1800, the deponent accompanied the defendant, General Alexander and Mr. Robert Duncan, from Carlisle to the islands at the mouth of the Juniata, for the purpose of surveying and taking possession of them, under a purchase from the agent of the proprietaries of Pennsylvania; that when they went on the Big Island, as it was called, there were several families residing thereon. Deponent recollects particularly the M'Elcars, Thomas, Martin, Jacob, and Daniel, and a family of the name of Clark; the whole of the residents, as this deponent believes, had assembled on the shore when or shortly after the surveying party landed. No opposition was offered, either as to the survey or possession; the only request that was made, to the knowledge of deponent, was that they should not be turned off by harsh measures, nor until they could provide themselves with other places of residence; all of them expressed a wish to leave; and each of them, during the progress of the survey, showed to the surveyor and this deponent the boundaries of their respective possessions; several of them proffered their services to assist in carrying the chain; some of them actually did assist, but who they were, is not now distinctly remembered.

The paper marked N is an original memorandum in my handwriting, and was made by me at the request of one of the M'Elcars whom I had seen on the island at the time of the survey. I signed, as a witness, the paper marked O; the body is in the handwriting of the late James Dunlop. The paper marked P is witnessed by me, and the whole of it, with the exception of the last sentence, commencing with the word witness, was written by me. I recollect distinctly telling M'Elcar that he had not written his name correctly;

and that he said he sometimes called himself Carr, and at others, M'Elcar. I know that the M'Elcars, both male and female, frequently got money from defendant during my continuance in his office. I left the office in 1803. When I speak of the M'Elcars, I always allude to those I saw at the Big Island. I delivered the paper marked N to Mr. Duncan at his return from one of the courts, the first time I saw him after it was written.

WM. IRVINE.

The same protestation and reservation is made by Mr. Douglass to this deposition as in the within deposition of Colonel Thompson.

Sworn and subscribed before me, at the house of James Bell, 16th February, 1827.

ELISHA DOYLE.

Indorsed: M'Elcar *v.* Elliott and Duncan. Deposition filed Feb. 22d, 1827.

Among the records of the Supreme Court of Pennsylvania, of the Middle District, it is thus contained. May T. 1831.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFAR, JOHN HOLLAND, and ROBERT BOWER.

Appeal from the Circuit Court of Dauphin County. Entered May 7, 1831, May 13, 1831. Answered May 14, 1831. C. A. V. June 1, 1831. Judgment of the Circuit Court affirmed.

Isaac Fisher. S. Douglas. 43. George Fisher. J. Hopkins.

Docket Entry of the Circuit Court.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFER, JOHN HOLLAND, and ROBERT BOWER.

Summons in ejectment, Dec. 3, 1822. Plaintiff in this suit enters a rule to take depositions of aged, infirm, and going witnesses, to be read at the trial, de bene esse, on ten days' notice. Summoned as to all the defendants, Dec'r 11, 1822. (Shff. C. G. 4, 85.) Fisher appeared Jan. 23, 1822. On motion of Thomas Elder, Thomas Duncan, the landlord, substituted as a defendant, and rule to take depositions on ten days' notice. April 28, 1823, transferred to the District Court. Oct. con. Dec. con. February 28, 1824, on motion of S. Douglass, Esq., Thomas Duncan, Esq., was added as co-defendant in

this suit, as landlord. March 15, 1824, on motion of Mr. Douglass, the rule to take the deposition of John Ayres, on Wednesday next, at 2 o'clock, at his residence. Notice at the bar (exit rule). May 27, the deposition of John Ayres; filed May, J. S., May 31, 1824. A jury of the county being called, came, to wit, Michael Stuckey, Jacob Rothrock, George Hocker, John Todd, William Espy, Jacob Plank, William Allen, Frederick Partheimer, Frederick Rudy, Jacob Fedderhoff, Jacob Shoemaker, and David Gingerich, twelve good and lawful men of the county of Dauphin, who, being all duly selected, do say, that they find for the defendant. June 5, 1824, judgment, P. C. June 7, received writ of error. November 27, 1826, second remitted from the Supreme Court, with certificate that the judgment of the District Court was reversed, and a venire facias de novo was awarded. Nov. 27, 1826, at the instance of Mr. Douglass, rule to take depositions ex parte, on ten days' notice. Same day, at the instance of Mr. Elder, rule to take depositions ex parte, on ten days' notice. January 10, 1827, depositions filed. Removed to the Circuit Court of Dauphin County. H. con., March 23, 1827, at the instance of plaintiff's attorney, rule to take depositions of aged, infirm, and going witnesses, ex parte, on ten days' notice (exit rule). Feb'y 6, 1829, at the instance of plaintiff's attorney, rule to take depositions of aged, infirm, and going witnesses, ex parte, on ten days' notice (exit rule). April 6, 1829, the death of Thomas Duncan, Esq., suggested, and Stephen Duncan, Esq., devisee, substituted defendant in his place and stead.

April 25, 1829. Rule on the part of defendants to take depositions ex parte, on ten days' notice (exit); depositions filed January 9, 1830; March, 1830, continued September, J. S., continued December, J. S., continued. February 21, 1831, Mr. Douglass moves for an attachment against Frederick Myers, Rebecca Clark, Robert Hewit, Henry Bowman, and William Reed, witnesses on part of plaintiff. Motion refused by the Court, on the ground of not proving personal service of subpœna. February 24, 1831, before the Hon. John Ross, Esq., Mr. Elder obtains leave to withdraw his name from the record as attorney for defendants. Same day, a trial ordered, whereupon a jury of the country being called, came, to wit, Adam Willard, John Buffington, Alexander M'Fadden, Christian Denny, Jacob Cassel, Solomon Shoffstall, Thomas Gilchrist, George Steuffer, George Garvenich, Henry Wagner, John Nesley, and John Berryhill, twelve good and lawful men of the County of Dauphin, who, all being duly selected, summoned, returned, empanelled, balloted, sworn, and affirmed, well and truly to try the issues joined in the cause, on their oaths and affirmations aforesaid, respectively do say, March 10, 1831, that they find for defendants. The jurors being polled severally, answered as aforesaid. Judgment on verdict rendered. Same day, plaintiff, by his attorney, moves for a rule to show cause why a new trial shall not be granted. Reasons filed. Same day, motion over-

ruled by the Court, and judgment entered on verdict absolute. Plaintiff appeals. Cert. of appeal filed. Charge of court filed.

Dauphin County, *ss*.

[L. S.]

I, John Roberts, Clerk of the Circuit Court, do certify, that the preceding is truly copied from the original record, and that the accompanying papers are those originally filed of record in this cause.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Harrisburg, this 5th day of May, A. D. 1831.

(Signed) JOHN ROBERTS,
Clerk.

Habeas Corpus.

Pennsylvania, *ss*.

The Commonwealth of Pennsylvania, to the President of the District Court for the County of Dauphin, and to every of them, greeting:

We command you, that the bodies of William Elliott, John Couper, John Holland, Robert Bowers, and Thomas Duncan, Esq., in our prison, under your custody, as it is said, detained, by whatsoever name the said William, John, John, Robert, and Thomas, may be charged in the same, under safe and secure conduct, together with the day and cause of being taken and detained, you have before the justices of the Circuit Court of the State of Pennsylvania, at a Circuit Court to be held at Harrisburg for the County of Dauphin, the second Monday of December next, then and there to do and receive whatever our said justices shall consider in that behalf, and have you there then this writ.

Witness the Hon. William Tilghman, Esq., Chief Justice of our Supreme Court, at Harrisburg, the 11th day of December, in the year of our Lord one thousand eight hundred and twenty-six, allowed by Molton C. Rogers.

(Signed) OBED. FAHNESTOCK,
Clerk.

Return to Habeas Corpus.

Dauphin County, *ss*.

The bodies of the within-named William Elliott, John Couper, John Holland, Robert Bower, and Thomas Duncan, Esq., in prison under our custody detained, by the name of the said William Elliott, John Couper, John Holland, Robert Bower, and Thomas Duncan, Esq., are charged in the same, under safe and secure conduct, together with the day and cause of their being taken and detained, we have before the justices of the Circuit Court of the State of Pennsylvania, on the day within specified, as within it is commanded.

So answers,

E. G. BRADFORD, [SEAL.]

(Precise.)

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFAR, JOHN HOLLAND, and ROBERT BOWER.

Ejectment, for an island situate in the River Susquehanna, in Halifax Township in Dauphin County, near the mouth of the River Juniata, it being the largest of several islands near the same place, and surveyed for the Proprietaries of Pennsylvania, in or about the year 1760, supposed to contain at this time 800 acres, more or less.

Prothonotary of Dauphin, please issue as above.

J. FISHER.

(Writ.)

Dauphin County, *ss.*

The Commonwealth of Pennsylvania to the Sheriff of Dauphin County, greeting:

You are hereby commanded that you summon William Elliot, John Coufar, John Holland, and Robert Bower, to be and appear before our Judges of the Court of Common Pleas, to be holden at Harrisburg, for said county, on the third Monday of January next, to answer Peter M'Elcar of a certain complaint made by him, that they now have in their actual possession an island situate in the River Susquehanna, in Halifax Township, in Dauphin County, near the mouth of the Juniata River, it being the largest of several islands lying near the same place, and surveyed for the Proprietaries of Pennsylvania, in or about the year 1760, supposed to contain at this time 800 acres, more or less, the right of possession or title to which the said Peter M'Elcar saith is in him, and not in the said William Elliott, John Coufar, John Holland, and Robert Bower, all which he averreth he is prepared to prove, &c. Hereof, fail not, and have you then there this writ. Witness, Samuel D. Franks, President of our said Court, this 25th day of November, in the year of our Lord one thousand eight hundred and twenty-two.

THOS. WATHER,
Prothonotary.

(Return.)

Summoned as to all the defendants. So answers,

C. GLEIM,
Sheriff.

(Bill of Exception.)

In the District Court of Dauphin County. Summons. Ejectment, for an Island in the Susquehanna River.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, Esq.

After the evidence given in the cause, to wit, the statement, writ, and record, prout the same, the plaintiff, to support the issue on his part, offers the deposition of Robert Armstrong, prout the same, taken agreeably to the rules of court, to prove that the plaintiff, or those under whom he claims, settled on and improved upon the island named in the writ, in the fall of 1749, or spring of 1750, and constantly resided thereon, from that time to year 1802, except when driven off by the savages in Braddock's war. That they built houses there, cleared farms, and made it the constant place of residence of themselves and their families. This proof to be followed by showing a warrant from the Proprietaries' Land Office, of the 13th of October, 1760, and *and* a survey thereon, in the name of the Proprietaries of Pennsylvania, on the 13th day of November, 1760, of this island, returned into the Land Office, and there accepted in the year 1768, prout said warrant and survey. To the foregoing offer defendants object; and in support of their objection read to the court the papers marked A, B.

To which deposition and offer in writing as aforesaid made, the counsel for the defendants then and there did object. Whereupon the court after argument did sustain the objection, and overruled the evidence offered as aforesaid; to which opinion of the court the plaintiff's counsel did then and there except, and pray the court to allow this their bill of exceptions, which is accordingly done.

E. G. BRADFORD, [SEAL.]

(Opinion of Court, Bradford, Judge.)

The court is of opinion that a right by settlement and improvement might be acquired to an island in the Susquehanna in the year 1749, and that the evidence offered is of an improvement right in 1749, continued to 1802, since which time the plaintiff, and those under whom he claims, have been out of possession. That this is a claim of an improvement and pre-emption right, existing on the 26th March, 1785, and lost by the negligence of the plaintiff to constitute his action for much more than seven years, and is barred by the 5th section of the Act of 26th March, 1785. That the evidence offered

is of facts which, if received, would not found or constitute a title in the plaintiff, either in law or equity, or give him a right of entry, and ought, therefore, to be rejected.

E. G. BRADFORD. [SEAL.]

Excepted to by the plaintiff.

Reasons for reversal.

1. The Court below erred in law in rejecting Robert Armstrong's deposition, as contained in the plaintiff's bill of exceptions and offer.

2. The Court also erred in charging the jury that the action of the plaintiff below was barred by the 5th section of the Act of 26th March, 1785.

S. DOUGLASS,
J. FISHER,
Attorneys for Plaintiff in Error.

May 11, 1825.

(Appeal.)

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WM. ELLIOTT et al.

In this case the plaintiff appeals from the judgment of the Circuit Court, for reasons filed of record, and we hereby certify that we verily believe the said reasons to be sufficient to obtain a decision in favor of the plaintiff, and not made for purpose of delay.

ISAAC FISHER,
Attorney for Plaintiff.

(Charge of Judge Ross.)

On trial in the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
DUNCAN et als.

March, 1831.

This ejectment is brought for what is commonly called the Big Island, situate in the Susquehanna River, above the mouth of the Juniata, containing about 695 acres. The plaintiff claims title by virtue of an improvement, settlement, an uninterrupted possession and residence of those under whom he claims, from the autumn of 1749 or the spring of 1750, until 1802, except when driven off by the Indians for a short time immediately after Braddock's defeat, in 1755, returning, however, as soon as they could with any kind of safety. They continued their residence and settlement until 1802, when Thomas Duncan, Esq., dispossessed them, as plaintiff alleges,

by management, menaces, and unfair means. That their settlement and improvement continued after the purchase from the Indians, the 22d day August, 1749; that they erected buildings, and cleared with their different improvements considerable land; and that all the improvements which were made on the island have been regularly transferred to him, and that he acquired a pre-emption right to the island to have a title on paying £5 per hundred acres.

The defendants claim the same by virtue of the following consequences, and the usage and custom of the Land Office:

13th day of October, 1760. Warrant from the Proprietarys (here the Court read the warrant), which warrant, amongst other things, directs the Surveyor-General, "That in such future surveys so to be made, you take particular care to survey for our use the several unappropriated islands in the Rivers Delaware, Schuylkill, and Susquehanna, and the several other rivers and creeks in our said province, and make returns from time to time of the same premises, into our Secretary's office, for our use, agreeable to the said former, and this our renewed warrant and order in that behalf."

12th July, 1763. Surveyed, in pursuance of the warrant of the 13th October, 1760, and survey returned into office, 4th May, 1799.

An entry was made on the letter by Mr. Coates, attorney in part for the Penns.

That it appears by the evidence that five or six years before 1802, the settlers went to Philadelphia, to Mr. Physick, the attorney in part of the proprietors, who had sent for them to come down and buy the island. That they returned and said they were not able to buy, they could not do it.

Thompson, a witness, says that after they came back from Philadelphia, that he heard Diven, Baskins, and Clark, say they wished the proprietary would come up; they expected to make a settlement with him, and get something for their improvement; they had no intention or expectation of remaining on the island; they expected to settle and get something for what they had done.

15th November, 1779, Mr. Penn sold to Duncan 350 acres of the island for the consideration of £700. 19th December, 1779, deed from Penn to Duncan for the same. 14th January, 1800, Colonel Alexander, at the instance of Mr. Duncan and the proprietary's agent, made a survey of the island without any interruption from the settlers. 30th June, 1800, the Penns sold to Duncan 395 acres of the island, leaving the residue of it, not before conveyed to him, on his paying £600. 12th July, 1803, deed from Penn to Duncan. 5th June, 1801, that Duncan purchased out the rights of Devin, Baskins, Clark, and Thomas M'Elcar, who released their improvements and rights, respectively to Duncan, who engaged to pay each 20*s.* per acre; to Baskins and Devins for 254 acres, £254. To Clark, £155 for 155 acres; and to Thomas M'Elcar, £50 for 50 acres, 8th June, 1801. Baskins and Diven were paid, so of George

Clark. Thomas M'Elcar delivered up, and 4th June, 1801, surrendered his right to Duncan, and leased of Duncan until the 3d April, 1803. The whole of the purchase-money, June, 1802, being received by those settlers, and the leases of the others having expired, they all removed from the island, and Duncan leased it to Martin and Jacob Miller, and John Potter. 12th March, 1800, Duncan leased to Martin M'Elcar and Daniel M'Elcar, the lands occupied by them for two years, paying annually two shad and two ears of corn.

The defendants then gave in evidence a great mass of documentary evidence, exemplified under the seal of the Land Office, many acts of Assembly, and many general dictums of the courts of various times, to show by the usage and customs of the Land Office, both during the time of the Proprietary Government and since, no warrant could issue to survey any island in the River Susquehanna for any private individual, unless by special contract, for a much larger price, the general mass of property offered for sale, and that the islands never were offered for sale by the proprietaries.

They requested the court so to instruct the jury, and that all islands in the large rivers were parts of the reserved land, as will appear by a reference to defendants' 4 and 5a points, on which the court are requested to charge (here the court read those points).

It is an undeniable truth that the proprietaries owned all the lands within the bounds of Pennsylvania, and had the absolute fee-simple in whole, and having the absolute fee-simple in the soil, they had an unquestionable right to retain it for their own use, or to dispose of it, or any part thereof, on such terms and such regulations and reservations as they might think proper to adopt. Generally speaking, the terms, regulations, and restrictions of the proprietaries in the sale of their lands are to be found in the usage and custom of the Land Office, emanating from and varying with the instructions given to those officers to whom the duty was confided.

None of the documentary or other evidence produced goes back to the period when the plaintiff alleges his settlements were made, by which he claims a pre-emption right. The warrant on which the island was surveyed issued the 13th day of October, 1760. The matters set forth in that warrant, which is as follows (here the court read the warrant). This warrant orders the Surveyor-General to survey their tenth, which had been neglected, and "that in all future surveys to be made you take particular care to survey for our use the principal islands in the River Susquehanna, &c., and to make returns, from time to time, of the same premises, into our Secretary's office for our use, agreeable to the said former and this, our renewed warrant and order in that behalf." It directs, also, so much of the vacant and unappropriated lands shall be surveyed to make up the deficiency in his tenth.

Under this warrant it would appear, from the number of surveys given in evidence, that nearly all the islands in the Susquehanna

were returned for the proprietary's use, which were surveyed for him and returned into office, before the 4th of July, 1776. If the custom of the land office was, from the earliest period, that no island could in any way be settled and improved, so as to constitute an equitable claim to a pre-emption right, anterior to the date of the warrant of 1760, why was the direction given, that in future surveys of the tenth, they should be particular to include the islands? Why call them unappropriated islands, if no one was at liberty to appropriate them? If it had reference to surveys before made to the proprietaries, would not it have been expressed, such islands as have not been already surveyed, and returned to our use? But how would that accord with the doctrine contended for by the defendants, that the islands were never offered for sale, among the mass of unappropriated lands? The question, however, is not whether the islands were offered for sale, amongst the general mass of property, nor whether they held the islands higher than their other lands. The question is, whether a settlement, improvement, and uninterrupted possession and residence, from 1750 to 1800, gives a pre-emption right to have the lands on such terms as the proprietary imposed on those contracting for islands. The usages, and customs of the land office, if any, in reference to this question, in 1750 to 1760—1765 to 1776, is binding on the settlers and Proprietary, as regards any inchoate or incipient right being acquired by such settlement, made at such a time. If the courts had expressly decided, in any reported case, that the custom contended for existed in 1750, up to 1760, when the warrant issued, it would then have been the duty of this court, without any other proof of the custom, to have told the jury there was such a custom binding on the parties; but no such decision has been produced, and hence the defendants have had resort to proof of circumstances, from which they say the existence of such a custom may be inferred. This is a question for the jury, on which they will decide. The evidence is in many respects cogent, and claims your attentive consideration. If you think the evidence will justify you in finding the usages and customs of the land office was to exclude all settlements, appropriations, and pre-emption rights on the islands, without a special contract with the proprietary for that purpose, here the plaintiff has no color of claim to the island in question. The plaintiff, and those under whom he claims, acquired no right or claim of any description in it. They were mere tenants at will, or trespassers, if no such usage and custom did exist; but if they were open, like the other tenth, before survey and return, to appropriation, by settlement, or warrant (which I think the evidence seems to forbid the belief), in that case, the plaintiff and those under whom he claims, by their settlement acquired a pre-emption right, which could not be destroyed by any after-acts of the proprietaries, unless they refused to complete the incipient right, by

paying for the lands settled on, at the customary prices at which such islands were usually sold by the proprietaries.

The propositions of the defendants, as contained in the 4th and 5th points, are acceded to under the qualifications here laid down.

The 6th proposition is agreed to, and the jury is so instructed.

To the 9th proposition, the court answer, that no person had right to settle on land before the lands were purchased of the Indians; and, of course, the plaintiff and those under whom he claims, could not have acquired any pre-emption rights to the land purchased of the Indians the 22d of August, 1749, before the purchase was made, unless by special license to settle from the proprietaries or their agents.

The 8th proposition is—If the defendant fairly and without fraud obtained the possession of the plaintiff and those under whom he claims, the law is as stated in the proposition; and the court so instruct the jury, if they shall be of opinion from the evidence, that the facts alleged in their proposition have been sufficiently and substantially established. Although the person having the legal and equitable title in land may lie by and let a person make improvements on it and subsequently recover it, yet, as a general rule, a person having only an equitable title will not be allowed to do so: especially without first tendering the full value of the improvements.

The 9th and 10th propositions: The court are of opinion that there are no facts disclosed in the evidence which will justify the application of the principles laid down in those two propositions; and that, therefore, the plaintiff is not bound by the statute of limitations, unless in the case of Thomas M'Elcar, who transferred his possession to Thomas Duncan, the 4th June, 1801, and took a lease of Mr. Duncan for three years; as regards that tract, the statute of limitations is a bar.

On the first proposition, the court instruct the jury that the plaintiff, before he instituted the suit, or at least on the trial thereof, should have tendered the amount of the consideration-money, fairly paid by Duncan, to the proprietor, he having the legal title.

And, as respects Baskins, David Clark, and Thomas M'Elcar, before they have any pretence to recover in this suit, or any person claiming under them, they should show that they have tendered and refunded, or offered to refund the, and were ready to do so, the amount of money paid each respectively by T. Duncan, for their improvements on obtaining the possession, and their executing to him a release of all their rights. Plaintiff having failed to show any such tender or readiness to pay, taking in connection their lying by more than 20 years, and suffering *and suffering* extensive and valuable improvements to be made by the defendants, without asserting any claim, and declaring themselves satisfied. If the facts are so in the opinion of the jury, then he cannot recover for the improvements made by those four persons. To allow him to do so, would be con-

trary to every principle of justice and equity. If they ask for equity, they should do equity by offering to restore things to the state, as near as possible, they were in when they gave the release, and received the consideration. They should have shown they were ready, and have offered to have done so. There is nothing in the evidence which entitles them to dispense with the equitable obligation, especially after a lapse of 20 years, without setting up any claim to the land.

In respect to the claim of Daniel and Martin M'Elcar, who it is in proof, held under a lease from plaintiff, and that they afterwards gave Duncan a lease and became tenants without the consent of the plaintiff, if they were the tenants of the plaintiff, and Duncan knew it, it was immoral and contrary to law in Duncan procuring a lease, and in their giving it; and if so done, it divested the plaintiff of none of his rights; he still retained all the rights of a landlord. He is entitled, under such circumstances, to have the possession he had thus been unfairly and fraudulently deprived of, restored. After which Duncan institute his ejectment against him. The first question under this head is, were Martin and Daniel M'Elcar fairly and bona fide the tenants of Peter, the plaintiff? 2d. Did Duncan know of it? 3d. Did Duncan, knowing of their being plaintiff's tenants, procure a lease to himself? If Duncan did not know of their being tenants of plaintiff, it ceased to have the character of immorality on the part of Duncan; but it would not justify him in retaining the possession, after he had satisfied himself they were tenants; nor would the law permit him to retain it against an honest landlord. And the plaintiff would be entitled to be restored to the possession, without any tender of the consideration-money paid by the defendant, on improvements made by him. If, therefore, Duncan procured the possession, which Daniel and Martin M'Elcar held under a lease from the plaintiff mala fide, unfairly, and fraudulently, he must restore it to the landlord. In coming to a conclusion on the facts, the jury, if they entertain any doubt of the lease having been made, or if made, whether it was fairly and bona fide done, or intended as a cover under a family arrangement, they may call in their aid of the great lapse of time which intervened between the making of the lease and delivering the possession to Duncan, without the assistance of any claim by the plaintiff. The doubt may be dispelled, by adding that to the evidence of defendant against such a lease ever having existed. These are matters of facts for the jury, on which I would not be understood as intimating any opinion, barely calling their attention to some of the prominent features of the evidence.

JOHN ROSS,
One of the Judges of the Supreme Court.

Exceptions to Charge of Judge Ross.

In the Circuit Court of the County of Dauphin.

PETER M'ELCAR
v.
DUNCAN, ELLIOTT, et als.

The plaintiff, by his counsel, excepts to the charge of the court in this case, upon the following points, and prays that the opinion and charge of the court may be filed of record.

1. In charging that, as to the part of the island held by Thomas M'Elcar, the Statute of Limitations of 21 years might operate against the plaintiff as to his recovery.

2. In charging that the plaintiff was bound to tender the money with interest, which Mr. Duncan paid to Mr. Physic, before bringing suit, or at the trial, and in not instructing the jury that the rents and profits of the land, received by him, might be put off by the jury against the money, if it was chargeable to the plaintiff.

3. In charging that, as plaintiff claimed only under an equitable title, and as defendants had held possession twenty years adversely, and made improvements, the plaintiff's recovery was barred, and that it made no difference in law if the defendant had obtained possession of the land mala fide. (The court made no such charge.)

4. In not charging the jury that the rents and profits of the land, received by the defendant, ought to be set off against the improvements made on the land by him.

5. In charging the jury that the legal title to the land was in defendant, notwithstanding the settlement and improvement of plaintiff, in 1750.

The plaintiff prays that these, his exceptions, may be allowed and signed by the court. Filed March 10, 1831.

Motion for New Trial.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOTT et al.

Plaintiff, by his counsel, moves for a new trial in this case, for the following reasons:

1. The verdict was against law and evidence.

2. The court erred in charging the jury, that as to that part of the land held by Thomas M'Elcar, the plaintiff is bound by the Statute of Limitations.

3. The court erred in charging the jury that the legal title of the land is in defendant.

4. In charging that the plaintiff was bound to tender to defendant the money paid by Mr. Duncan to Mr. Physic for this land, before bringing suit, or at the trial, and in not charging, that if such money ought to have been tendered, the jury might set off the rents and profits of the land, received by the defendant, against the same.

5. In not having the manner of obtaining possession by defendant, the time he held possession, the improvements he made on the land, and the rents and profits he received therefrom, as matters of fact for the jury, to be decided by them as matter of equity under all the circumstances of the case.

ISAAC FISHER,
S. DOUGLASS,
Attorneys for Plaintiff.

8. And the plaintiff, by his counsel, assigns the following reasons also why a new trial should be granted in this case, to wit, that the verdict in this cause was rendered by the jury under a mistake and misapprehension of the law: in this, that many of the persons were in favor of finding for the plaintiff for a part of the island named in the writ, but were told by one of their fellow-jurors that, by the law, they could not find for the plaintiff for a part of the land, which assertion they believed to be agreeable to the law, and under this belief agreed to find a general verdict for defendant.

9. That one of the jurors is related to defendant.

We certify that the 8th and 9th reasons were unknown to us at the time of filing the previous reasons, and that we verily believe the said reasons to be sufficient to obtain a verdict in favor of plaintiff.

S. DOUGLASS,
ISAAC FISHER,
Attorneys for Plaintiff.

(Defendant's Depositions.)

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFER, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, Esq. } No. 191.

And now, to wit, on the 27th day of November, 1826, rule to take depositions on the part of defendants, ex parte, on ten days' notice.

The Justice of the Peace or other officer before whom the depositions is taken, in pursuance of the above rule of court, is required to

state on the deposition, the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record the 27th day of November, 1826.

[SEAL.] For OBED. FAHNESTOCK,
Prothonotary,
C. A. SNYDER.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COWFER, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 191.

Rule to take Depositions, &c.

Sir: Please to take notice, that it is intended, on the part of defendants in the above suit, to take the depositions of witnesses before Elisha Doyle, Esq., at his office, in Hanover Street, in the Borough of Carlisle, Cumberland County, or before some other competent authority, at said place, on Friday, the 8th day of December, 1826, between the hours of ten in the forenoon and three in the afternoon of said day, when and where you are requested to attend and cross-examine the witnesses, if you think proper. And which depositions are intended to be read in evidence on the trial of the above cause.

THOMAS ELDER,
Attorney for defendant.

Nov. 27th, 1826.

SAMUEL DOUGLASS, ESQ.,
Attorney for plaintiff in above suit.

1826, Nov. 27, served the original notice, of which the above is a copy, on Samuel Douglass, Esq., attorney for plaintiff, personally, by handing same to him in court-house, &c.

T. E.

In the District Court of Dauphin County, of May Term, 1823.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COWFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ. } No. 191.

Cumberland County, *ss.*

In pursuance of the above rule, personally appeared before the subscriber, a Justice of the Peace in and for the County of Cumber-

land aforesaid, Thomas Brown, a witness on behalf of defendants, and he being sworn, according to law, saith as follows:

I came to live with Mr. Duncan as his agent in May, 1802. I had the care of all his real estate, selling of his grain, and the entire management of the business connected therewith. The Big Island in Dauphin County was part of the estate delivered to my care. It was the first part I visited; the first business I done was transacted there. I went to the Big Island in the latter part of June, 1802, by direction of Mr. Duncan, to carry over a sum of money, and pay it to a man whose name, I think, was William Baskins, for his right to the possession of the Big Island under the M'Elcars, and for the crop then in the ground. Baskins had given up the possession of the island to Mr. Duncan before this time, and had removed from the same, and a man by the name of Potter was then living on the island as the tenant of Mr. Duncan. Baskins was to meet me on the island, as I had understood from Mr. Duncan. When Baskins met me on the island, he told me had come to get the money that Mr. Duncan was to send to him. I paid him the money; it was between eighty and ninety dollars. He was perfectly satisfied with the money he received, and gave me his receipt in full, which I delivered to Mr. Duncan. He said Mr. Duncan was a gentleman, and that that was the bargain. When I came to live with Mr. Duncan, I found him in the quiet and full possession of the Big Island. The island was divided into three farms: the farm at the Point, the middle farm, and the farm at the head of the island. Potter lived on and worked the farm at the Point under a lease from Mr. Duncan, and delivered me, as his agent, one-half of the grain that was raised on the place. Old Mr. Miller, a Mennonist, and his family, lived on the middle farm, and worked the same under a lease from Mr. Duncan, on like terms with Potter. Martin Miller, a son of the old man, lived at the head of the island, under a like lease. These tenants all lived on their respective farms under leases from Mr. Duncan, and continued to live there three years. After Potter went away, Myers came to that farm under a lease from Mr. Duncan, and remained there during the time I continued the agent of Mr. Duncan, and delivered me the one-half of the grain and crops that were raised on the farm during the whole of that period. The middle farm, on which the Millers lived, was rented for one year after they left it to a German, whose name I do not recollect. He held it on like terms with the Millers. After he left it, one Mills came into possession of the middle farm, as a tenant under Mr. Duncan. John Douglass had rented the farm from Mr. Duncan, and put Mills, his brother-in-law, into possession. Mills lived there a year, and after that time the farm was worked by Douglass, while I continued to be agent. George Clark worked the upper farm as the tenant of Mr. Duncan one year on like terms with the others, and after he left that, Douglass came to the head farm, and remained there three years.

When I first went to the island in 1802 there were several persons living in little huts on different parts of the island; George Clark lived on the Branch; his son, John Clark, lived up by the graveyard; Robert Hewitt lived up the Branch; John Martin lived on the bank of the Susquehanna in a little hut: these men made their living by fishing, gunning, and laboring; they farmed none, unless one of Mr. Duncan's tenants would, by permission, occasionally give them a field to work on the shares; when that was the case they always rendered me the half of the crop; John and George Clark moved off the Big Island in the spring of 1803; they went away in debt to Mr. Duncan; the huts in which they had lived were pulled down; they claimed no right, as far as I understood, while they lived in those huts, either to the huts themselves, or to any part of the Big Island: this I understood both from Baskins and Mr. Duncan. Clark plead with me to let him remain in his hut until the ensuing spring, and he was permitted to do so with consent of Mr. Duncan; the farmers complained that so many lived on the island would overstock it with cattle and hogs; Mr. Hewitt and Mr. Martin applied to me to intercede with Mr. Duncan to let them stay in their huts. I did so, and they were permitted to remain under Mr. Duncan; they claimed no right otherwise than by privilege from him; Martin remained about six years, and Hewitt remained while I was the agent of Mr. Duncan; I left him there.

I knew Thomas M'Elcar when I saw him; Martin M'Elcar I knew intimately well. Martin M'Elcar lived in Petersburg, and frequently done work *work* for me as a laboring hand, especially in fishing time; he was there in fishing seasons every spring, perhaps, for five or six weeks at a time; I, as the agent of Mr. Duncan, drew one half of the fish, and the other half went to the hands; Martin M'Elcar drew an equal share with the other fishermen; he also assisted as a laboring hand in procuring and boating stone and lime for the barn, and frequently done other laboring jobs; he was hired like another laborer and received his wages from me. In June, 1802, the wives of Thomas and Martin M'Elcar came to Carlisle, and called upon me for something that Mr. Duncan had promised them at the time of the agreement for the right of the island; I went with them to Mr. Duncan, and he told me to go over to Mr. Moore's store, and buy them such dresses as they pleased to take, and I did so; they got the dresses, and I brought the bill of them to Mr. Duncan. In the course of a few weeks after this, I cannot say how long, some woman, who called herself the wife of Peter M'Elcar, came to my house; she complained that Mr. Duncan had been so good to the rest and that she had got nothing; I took her to Mr. Duncan's office; when we went there she went on very high and used rough language, stating that he had been so kind to the rest and she had got nothing. Mr. Duncan told me to take her over to Mr. Moore's store, and let her have what she wanted, and never to let him see her ugly face again; she was then

far advanced in pregnancy. I took her over to the store and she got a dress for herself and some calico, also some muslin and flannel.

In 1802, when I first went to the island, there were no fences, only the one running up the Susquehanna, the others were bush fences. There was no house erected on the farm, except a log-house on the middle farm; there were no barns; there were no wells when Mr. Duncan got possession, except one that he had sunk in the second or third year; after he got it he dug two wells. We planted a thousand trees of grafted fruit, dividing them into three orchards, one on each farm. He had rails made at the rate of from a thousand to fifteen hundred a year for the use of the farms on the island.

I was with Mr. Duncan as his agent six years and nine months. During that time I was on the island more than fifty times every year. In the spring of the year I would generally be there from five to six weeks during the fishing season. I never heard of any disturbance of the possession of Mr. Duncan, nor of any claim by any man to any part of the island. I never heard of any claim to it until I heard it from Mr. Duncan when I went to Harrisburg on this suit. I had frequent conversations with Martin M'Elcar, and he never complained of any ill-treatment from Mr. Duncan, but on the contrary, said that Mr. Duncan had always treated him like a gentleman; he did not, in any of those conversations, ever set up any claim to any part of the island.

S. Douglass appears as attorney for the plaintiff, and objects to each and every part of the foregoing deposition, and to the irrelevancy and illegality of the same; and of taking the same, and reserving the right to make all and every legal objection to the same, and every part thereof, and to the taking of the same, puts the following questions:

J. D. Mahon, Esq., protests against the above reservation, so far as it respects the right of the party to take those exceptions, which his appearance and cross-examination cures.

Question. Where did you live after you were employed by Mr. Duncan, as his agent, in 1802, during your agency?

Answer. I always lived in Carlisle during my agency, which commenced in May, 1802.

Question. Were you present when Mr. Duncan first got possession of the island; and if yea, from whom did he get possession?

Answer. I was not present; know not of whom he got possession; he was in possession when I came there.

Question. Do you know who lived on that island before May, 1802?

Answer. I do not.

Question. Were you present, or have you any knowledge of the fact, that Baskins purchased the M'Elcars' right to the island?

Answer. I was not present, and have no knowledge of it; and I have no knowledge of anything that took place relative to the Big Island, before May, 1802.

Question. Have you ever known Peter M'Elcar, the plaintiff, to live on the Big Island?

Answer. I never did.

Question. Were you present at the first leasing of the island by Mr. Duncan, to those persons whom you have mentioned as living in the huts or on the farms on the island?

Answer. I was not. I don't know how the persons came there that were living in the huts; they were there before I came there, but I know how they lived after I came there, and that it was by the permission and charity of Mr. Duncan.

Question. Were you present, when Mr. Baskins delivered up the possession of the island to Mr. Duncan?

Answer. No, I was not.

THOMAS BROWN.

Sworn and subscribed, between the hours of ten and two o'clock, Friday, the 8th December, A.D. 1826.

ELISHA DOYLE.

Dauphin County, *ss.*

In the Circuit Court of Dauphin County, of December Term, 1826.

PETER M'ELCAR
v.
WILLIAM ELLIOT, JOHN COUFAR, JOHN HOLLAND, ROBT. BOWER, and THOS. DUNCAN, Esq.

And now, to wit, on the 19th day of January, 1827, rule to take depositions on part of the defendants, of ancient, infirm, and going witnesses, ex parte, on ten days' notice.

The justice of the peace, or other officer before whom the deposition is taken, in pursuance of the above rule of court, is required to state, on the deposition, the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record, the 19th day of January, 1827.

[SEAL.] For OBED. FAHNESTOCK,
Prothonotary,
C. A. SNYDER.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, JOHN COUFAR, JOHN HOLLAND, ROBERT BOWER, and THOMAS DUNCAN, ESQ.

Before me, the subscriber, one of the Justices of the Peace of Perry County, personally appeared William Irwin, a witness adduced on the part of the defendants, who being duly sworn according to law, doth depose and say, that the several orders marked A, B, C, D, E, were paid to the several persons in whose favor they were drawn, and paid by the said Thomas Duncan to me. Mr. Duncan, my brother Jacob, and I, bought Wm. Baskins out; and there was no crop in the upper part of the island.

Douglass appears as attorney for plaintiff, and objects to the legality of the foregoing deposition, and to the taking of the same, and reserves the same protestation to the legality and taking of the subjoined deposition.

WILLIAM IRWIN.

Sworn and subscribed, February 13, 1827, Thomas Duncan attending on behalf of defendants, and Samuel Douglass, for plaintiff, before me, at the house of John Boden.

FREDERICK SPECK.

And Martin Miller, likewise a witness adduced on behalf of defendants, being duly affirmed, says, that the lease of Thomas Duncan to Jacob and Martin Miller, and mark "Martin Miller," is the mark made by this deponent to said lease, and that he moved on the Big Island, the head thereof, in pursuance of the lease, about the 1st of April, 1802; that he moved to that part occupied by the M'Elcars; Jacob Miller, his brother, moved to the middle part, occupied by one George Clark; John Potter moved to the lower part, occupied by William Baskins. Daniel M'Elcar empl'd a little house for me, and gave possession last of May, or first of June, 1802. Daniel and Jacob M'Elcar left the island, and got possession of the whole of M'Elcars' part. My brother Jacob got possession of the whole of George Clark's part about the 1st of April, 1802. John Potter got possession of William Baskins' part some time in April. My brother and I got quit-possession. Neither he or I was ever disturbed. I remained on the upper place for three years, and moved to the middle part, where I continued for one year, when Douglass went into possession of it. The buildings on the upper part were not worth more than two hundred dollars according to his opinion; the fences were poor, not fit to keep out cattle. Some of the fields were

grown with sprouts. The middle house and barn of Clark's were better than the upper ones. Baskins' house and barn were better than the upper ones. The fields were in better order than the upper ones. Said house was old, but better than the upper one. There was but one well on the island. There was a running stream on the Branch side of the island. There were two wells dug by direction of Judge Duncan, one at Clark's and the other at Baskins'. There were three orchards planted by Judge Duncan while I lived on the island.

Cross-examined by Mr. Douglass.

I do not remember that any more of the M'Elcars lived on the island except Daniel and Jacob when I went there. They were the brothers of Peter M'Elcar, the plaintiff in this suit. I do not know who Daniel and Jacob held possession under at the time I came there. I was not present when my brothers, Jacob and John Potter, got possession of the island.

his
MARTIN ⋈ MILLER.
mark.

Sworn and subscribed, February 13, 1827, before me,
FREDERICK SPECK.

N.B.—The words in crotchets, to wit, "Mr. Duncan, my brother Jacob, and I, bought Wm. Baskins' crop, and there was no crop on the upper part of the island," in Wm. Irwin's deposition, are part of Martin Miller's deposition, and so to be considered.

S. DOUGLASS,
Attorney for Plaintiff.

Robert Clark, a witness also adduced on behalf of defendants, being duly sworn, says:

I have known the Big Island for about thirty years. When I first knew it, old Patrick M'Elcar and his sons, Thomas, Daniel, Jacob, Peter the plaintiff, and Martin, lived at the head of the island, and after Patrick's death, his sons, all except the plaintiff, who, some time after, moved to the State of New York, continued to live on it till 1802. George Clark and John Diven lived on the middle part of the island, and William Baskins lived on the lower part till 1802, and it has been occupied by tenants of Mr. Duncan since that time. I had conversation with Daniel and Martin M'Elcar between 1800 and 1802, and they said they had got more money from Mr. Duncan than they had expected, and said he had treated them extremely well. After 1802, I saw Martin M'Elcar go into Carlisle to see Mr. Duncan, and he told me he had got money from him, and a full dress for his wife. Martin mended the seine and fished for Mr. Duncan, at the head of the island; after that, and some time after 1802,

Peter came down and moved his family to some part of this county, and since that has moved up to Lewistown; and, to the best of my knowledge, he was employed by Mr. Duncan since that, in getting stone for the new house. Three orchards were planted by Mr. Duncan after he got possession of the island, containing in the whole about a thousand trees. I assisted in planting those orchards, and while there, I think Martin M'Elcar assisted also at the orchards. George Clark and John Duncan came to me in May, 1802, and asked me if I would not buy one or more little islands they had; that they were about leaving the country, and if I would buy their islands they would have all their business settled, and go away. They said they had fixed all their business with Mr. Duncan, and received all their money, in specie, before it was due, and if I would buy their islands they would go away and wish us all good fortune. I bought their islands. In conversation with William Baskins, he said he had bought land in New York, and got all his money from Mr. Duncan in hard money. George Clark lived on the Little Island under Mr. Duncan, and after that lived on the head of the Big Island, under Mr. Duncan. (Receipt in the Receipt Book of Mr. Duncan, is now produced, signed George Clark (marked G); another receipt in said book, also produced (marked H), signed by the said George Clark, is also the writing of said George Clark. A letter, also produced, signed "A Squirrel Hunter," marked (J), is also in the handwriting of the said George Clark. A letter signed (K), from Martin M'Elcar, is also in the handwriting of Martin M'Elcar. Martin M'Elcar's receipt, marked (L), is also in the handwriting of Martin M'Elcar. A receipt in Mr. Duncan's receipt book, marked (M), signed Thomas M'Elcar, or Carr, is also in the handwriting of Thomas M'Elcar; and he was in the habit of writing his name sometimes Car, and sometimes M'Elcar.

Cross-examined by Mr. Douglass, who reserves the right of objecting to all and every part of this and the foregoing depositions.—I do not know that I was on the island when Mr. Duncan got possession of any part of it.

ROBERT CLARK.

Sworn and subscribed February 13, 1827, at the house of John Boden, in the presence of Thomas Duncan, who appears for defendants, and Samuel Douglass, who appears for plaintiff, before me,

FREDERICK SPECK.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, and others.

Cumberland County, *ss.*

In pursuance of a rule to take depositions in this case, personally

came before the subscriber, one of the justices of the peace in and for said county, Col. Robert Thompson, who, on his oath, duly administered according to law, doth depose and say: That he thinks it is thirty-six years past since he knew the Big Island. The principal settlers on the island were George Clark, William Baskins, John Diven, Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, and Martin M'Elcar. Clark, Baskins, and Diven, resided there from the time deponent knew the island until about the year 1802. The said Thomas, Jacob, Daniel, and Martin M'Elcar, resided there after their father's death for some time. The said island, since the year 1802, has been constantly in the possession of Thomas Duncan, Esq. Deponent built a house for Mr. Duncan there, about the year 1811. It was built on the middle farm, formerly the place of George Clark. Peter M'Elcar deponent knew to be in the neighborhood of said island about the year 1812 or 13. At that time the said Peter was among the hands that were working at the new house on the small island; and there were stone quarried for said house on the Big Island.

The buildings were poor from the time deponent knew it until the year 1802. The buildings on the M'Elcars' part were not worth in all two hundred dollars. They consisted of a cabin-house and a barn of round logs.

The buildings on Clark's part were not good, but they were something better than the others. The buildings on Baskins' and Diven's part were worth but little more than M'Elcar's, not more than one hundred and fifty dollars each, at most. The fences on the whole island were generally bad.

[Samuel Douglass, Esq., appears as counsel for plaintiff, and objects to the legality of all and every part of the foregoing deposition, and to the authority for taking the same, and reserves the right hereafter so to object.]

The letter signed *a* "A Squirrel Hunter," marked (I), deponent believes to be the handwriting of George Clark. Deponent went to school with him.

ROBERT THOMPSON.

Sworn and subscribed at the house of James Bell, in the Borough of Carlisle, the 16th Feb. 1827, before me,

ELISHA DOYLE.

At the same time and place personally appeared W. B. Irvine, who, being duly sworn, saith: that some time in January, 1800, the deponent accompanied the defendant, Gen. Alexander, and Mr. Robert Duncan, from Carlisle to the island at the mouth of the Juniata River, for the purpose of surveying and taking possession of them under a purchase from the agent of the Proprietaries of Pennsylvania. That when they went on the Big Island, as it was called,

there were several families residing thereon. Deponent particularly recollects the M'Elcars, Thomas, Daniel, Martin, and Jacob, and a family of the name of Clark. The whole of the residents, as this deponent believes, had assembled on the shore when, or shortly after, the surveying party landed. No opposition was offered, either as to the survey or possession. The only request that was made, to the knowledge of deponent, was that they should not be turned off by harsh measures, nor until they could provide themselves with other places of residence. All expressed a wish to leave, and each of them, during the progress of the survey, showed to the surveyor and this deponent the boundaries of their respective possessions. Several of them proffered their services to assist in carrying the chain. Some of them actually did assist, but who they were is not now distinctly remembered. The paper marked (N) is an original memorandum in my handwriting, and was made by me at the request of one of the M'Elcars, whom I had seen on the island at the time of the survey. I signed as the witness the paper marked (O). The body is in the handwriting of the late James Dunlop. The paper marked (P) is witnessed by me, and the whole of it, with the exception of the last sentence, commencing with the word "witness," was written by me. I recollect distinctly telling M'Elcar that he had not written his name correctly, and that he said he sometimes called himself Car, and at others M'Elcar. I know that the M'Elcars, both male and female, frequently got money from defendant during my continuance in his office. I left the office in 1803. When I speak of the M'Elcars, I always allude to those I saw at the Big Island. I delivered the paper marked (N) to Mr. Duncan on his return from one of the courts, the first time I saw him after it was written.

WM. B. IRWIN.

The same protestation and reservation is made by Mr. Douglass to this deposition, as in the within deposition of Col. Thompson. Sworn and subscribed before me, at the house of James Bell, 16th Feb. 1827.

ELISHA DOYLE.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, and others.

And now, to wit, on the 19th day of January, 1827. Rule to take depositions on part of defendants, ex parte, on ten days' notice.

The justice of the peace, or other officer before whom the depositions is taken, in pursuance of the above rule of court, is required to state on the depositions the hour when the same was taken, and also whether any person attended to cross-examine the deponent.

Certified from the record, the 21st day of May, 1827.
For OBED. FAHNESTOCK,
C. A. SNYDER.

In the Circuit Court of Dauphin County.

Rule to take Depositions.

PETER M'ELCAR
v.
WILLIAM ELLIOTT, and others.

Sir:, Please to take notice, that is the intention on the part of the defendants in the above-stated cause, to take the depositions of witnesses, in pursuance to rule, before Alderman Pettit, at his office, in South Fifth Street, No. 12, in the City of Philadelphia, on Monday, the 16th day of April, 1827, between the hours of 12 and 3 of the clock in the afternoon of said day, when and where you are requested to attend, and cross-examine the witnesses, if you think proper, and which depositions are, with the court's permission, are intended to be read in evidence on the trial of the above cause.

THOS. ELDER,
For Defendants.

SAM'L DOUGLASS, ESQ.,
Attorney for Plaintiff.
March 21st, 1827.

1827, March 22, handed the original, of which the above is a copy, to Mr. Douglass, in his office.

T. E.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WM. ELLIOTT, and others.

Take notice, that depositions on part of defendants, will be taken at the office of Alderman Pettit, in the City of Philadelphia, at No. 12 South Fifth Street, on Monday, the 16th day of April next, between the hours of 12 and 3 o'clock.

THOS. DUNCAN.

MR. PETER M'ELCAR.
14th March, 1827.

Perry County, *ss.*

Before me, the subscriber, a justice of the peace in and for said county, personally appeared John Boden, who being duly sworn according to law, doth depose and say, that he served a copy of above

notice, by leaving it at the residence of Peter M'Elcar, in the Borough of Lewistown, on the 24th March, instant.

JOHN BODEN.

Sworn and subscribed, 27th March, 1827, before me,
ROBERT CLARK.

In the Circuit Court of Dauphin County.

PETER M'ELCAR
v.
WM. ELLIOTT et als.

Depositions of witnesses taken in the above cause, by virtue of a rule and notice hereunto annexed, at the office of Alderman Pettit, at his office, in South Fifth Street, No. 12, in the City of Philadelphia, between the hours of 12 and 3 o'clock in the afternoon.

Turner Camas, of the City of Philadelphia, a witness produced on the part of the above defendant, being duly sworn according to law, doth depose and say, that he is well acquainted with the pedigree of the family of William Penn, the founder of Pennsylvania, as also with the pedigree of John Penn, of Stoke, in England, commonly called John Penn, Jr., and Richard Penn. The deponent married a connection of the Penn family; and, from information which he believes accurate, he states the said pedigree to be as follows: William Penn was twice married; the descendants by the first marriage he does not particularize, because he understands they do not bear upon the cause.

By his second wife, Hannah Callowhill, William Penn, the founder, had three sons, John Penn, Thomas Penn, and Richard Penn, the 1st. John Penn, the eldest son, died *died* without issue, by which his half of the Proprietary estates went to his brother Thomas. Thomas Penn was thus entitled to three-fourth parts of the said estates, and leaving two sons, viz., John Penn, of Stoke, above named, commonly called John Penn, Jr., and Granville Penn. Richard Penn, the 1st, died, leaving two sons, viz., John Penn (commonly called John Penn the elder), and Richard Penn, the 2d. John Penn, the elder, died without issue. Richard Penn, the 2d, died leaving two sons, viz., William Penn and Richard Penn, 3d, both now alive.

John Penn, of Stoke (commonly called John Penn, Jr.), is still alive.

The above is, according to the best of my knowledge and belief, having acquired my knowledge by various means.

T. CAMAC.

Sworn and subscribed, this 16th day of April, A. D. 1827, between the hours of 12 and 3 o'clock, P. M. No one attending to cross-examine on part of the plaintiff, and the said examination having been taken down in my presence and under my sanction from

the lips of the witness. The deposition was kept open for cross-examination until 3 o'clock P. M.

N. PETTIT,
Alderman.

Supreme Court of Pennsylvania, Middle District.

I, Philo C. Sedgwick, Prothonatary of the Supreme Court for the Middle District of the Commonwealth of Pennsylvania, do certify, that the above and foregoing is a full, entire, and complete copy of the record and depositions of the defendant in the case to which it refers, to wit, the case of Peter M'Elcar *versus* William Elliott et als., as the same now remains on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Supreme Court at Harrisburg, this 30th day September, A. D. 1842.

P. C. SEDGWICK, [SEAL.]
Prothonotary.

Pennsylvania, *ss.*

Indorsed: M'Elcar *v.* Elliott et als. Copy of record from Dauphin County.

I, Thomas Duncan, of the City of Philadelphia, do make and publish this, my last will and testament, the seventh day of June, 1827. I direct my debts to be paid by my executors, and as a primary fund, I charge my lands in Alabama, and Owega, in the State of New York, Armstrong, Jefferson, Bedford Counties, in Pennsylvania, directing my executors, in the first place, to apply to their discharge the mortgage assigned to me by Thomas Stevenson on the lands of the late John Carson; the land sold to me by the late John Carson; the house and lot in Carlisle, bought by me from my brother James, the money due on the mortgage of Coda, in Columbia County, and my one-fourth part of a tract of land, on Bald Eagle Creek, Centre County, which I hold with Derrick Gowgolus, and the heirs of Jonathan Walker; the one-half of a tract of land in Lycoming County, warranted in the name of Robert Lyon and John Reed; the one-half of two tracts of land, in the same county, in the name of Donneldson and Uster, and a small island in Lycoming Creek warranted in the name of John Flide, and my lands in Jefferson County.

I entertain a hope, that these lands and moneys will pay all my debts, but should this not be the case, then my executors are to proceed to sell so much of my lands, in Cambria County, as will be sufficient, and if this will not suffice, then such parts of my lands in Tioga County, as may be necessary; and I direct my executors, at their own time and manner, to sell and dispose of the said lands, and pay my debts. These appropriations will, I trust, be more than adequate to this purpose. I give and bequeath to my beloved wife,

in lieu and satisfaction of her dower and thirds, all my household and kitchen furniture, and I charge my lands and real estate with the sum of $1366; five hundred pounds to be paid to her annually during her life, and I empower her, by last will in writing, to charge my estate, with the sum of three thousand dollars ($3000). I have advanced to my son, Robert C. Duncan, dec'd, and paid his debts, a sum exceeding eleven thousand dollars. In addition to this, I give and bequeath to his two sons, two tracts of land, one in Newton Township, Cumberland County, containing about two hundred and fifty acres, bought from Samuel Caldwell, and a tract of about four hundred acres, bought from Nicholas Waln, situated in Southampton Township, a tenant in common, to hold to them and their heirs and assigns in forever. Provided, that in case of the death of one of them, his estate to go to the survivor, in the event of his dying under age, unmarried, and without issue; and in the event of the death of both under age, unmarried, and without issue, then to go over to the heirs, ex parte paterna. My daughter Stiles, with advances made to her, marked in a book, referred to by the letter B, now in possession of my wife, will *will* have received a sum exceeding four thousand dollars, besides the lands conveyed to Mr. Stiles, which I value at seven thousand dollars, making eleven thousand dollars. My son Stephen, has been advanced as per entry in said book, to the amount of four thousand dollars. I give and bequeath to him, and his heirs and assigns, the island in the Susquehanna, commonly called the Big Island, now in possession of Elliott and Peirson; the Carothers farm, and the lots he now holds possession of under me, to fall back, and be considered part of my estate; my son, John, has been advanced by me, to an amount greatly exceeding four thousand five hundred dollars; in addition thereto, I give and bequeath to his daughter Frances, the sum of eight thousand dollars, on her arrival at the age of twenty-one, or day of marriage, but if she should die before twenty-one, and without issue, then this legacy to be lapsed. And in the meantime, for her maintenance and education, I allow her the sum of three hundred dollars yearly, and every year, and I allow her mother, the widow of my said son, one hundred and fifty dollars yearly, during her widowhood. I have advanced my daughter Mahon, as per reference to the said book, a sum exceeding three thousand dollars; in addition to that, I give and bequeath to her, and her heirs and assigns, the lot on the Letart Spring, near the bridge on the main street, containing eight acres, and the houses and lots of ground, now in the possession of Mr. Mahon, and the lot of twelve acres, adjoining the grounds of the United States, formerly in possession of Robert M'Coy. I have advanced to my daughter Hayne, including the Indiana lands, nine thousand dollars; I give and bequeath to her daughter Frances, the sum of two thousand five hundred dollars, in addition thereto, to be paid on her marriage, or arrival at the age of twenty-one years; if

she die unmarried under age, and without issue, this legacy is not to be raised; the interest alone is to be paid to her annually. To my daughters Catharine and Martha, I devise each the sum of twelve thousand dollars each, until my daughter Martha arrives at the age of twenty-one or marriage; the principal is not to be raised, but the interest to be applied to her maintenance and education. My island, bought of John Reed, at the mouth of Juniata, I direct to be appraised by three persons, to be selected by my executors; and if my son Stephen will accept of the same at the valuation, then it is to be conveyed to him in fee simple, he securing the purchase-money by mortgage on the premises, which purchase-money is to be considered as part of my residuary estate; if he refuses to take it, then it is to be sold by my executors.

All my estate, except what is specifically devised and bequeathed, I authorize my executors, or the survivors of them, to sell and dispose of, and the proceeds, after payment of my debts, legacies, and charges, I dispose of in the following manner, to wit: Two shares to my daughter Ann, and her heirs and assigns; two shares to my daughter Mary, her heirs and assigns; two shares to my son Stephen, and his heirs and assigns; one share to each of my grandchildren, Thomas and Benjamin Stiles Duncan, on the same contingency as is before stated with regard to the devise of lands to them, and limited in the same manner. To my granddaughter, Frances Hayne, and her heirs and assigns, one share, subject to the same limitation as the legacy bequeathed to her. To my granddaughter, Frances Duncan, and her heirs and assigns, two shares, subject to the same limitation as the legacy given to her. To my daughter Catharine, two shares, and to my daughter Martha, two shares.

Should any of my children or grandchildren disturb the disposition of any estate I have devised them, the devise to such child or grandchildren shall be null and void, and the estates granted them to be considered as a residue of my estate, of which they are to have no share. If any lands I have devised shall be recovered by an adverse title, then the devisee of such land is to have a fair value therefor, charged on the whole estate, and each devisee and legatee to contribute in proportion to the amount bequeathed to them. As I am very anxious the children of my son R. C. Duncan should receive a liberal education, I commit the care of them to my son Stephen, who is to make provision for that purpose; and if the rents of the estate bequeathed to them should not be adequate to support and maintain them during their collegiate course, the deficiency is to be made up out of my general estate. I do nominate and appoint my wife, my son Stephen, my son-in-law Edward J. Stiles, and John D. Mahon, executors of this my last will.

THOMAS DUNCAN.

Query. As to the disposition of the Carothers place and lots to

Stephen, whether he ought not to have them in addition to the Big Island. I begin to think he ought; this to be considered.

Cumberland County, *ss.*

Before me, Jacob Hendel, Esq., register for the probate of wills, and granting letters of administration in and for the County of Cumberland, personally came Benjamin Stiles and Dr. David N. Mahon, and each of them being duly sworn, according to law, depose and say, that they, and each of them, were well acquainted with the Honorable Thomas Duncan, Esq., late of the City of Philadelphia, deceased, and each of them doth say, that they, individually, are well acquainted with his handwriting, each of them having often seen him write, and each of these deponents, upon their solemn oath, do say, that the foregoing instrument of writing (to which this paper is attached), purporting to be the last will and testament of the said Thomas Duncan, Esq., beginning with the words, "I, Thomas Duncan, of the City of Philadelphia," and ending with the words, "executors of this my last will," as well as the signature, "Thomas Duncan," together with the said Query attached to said will, and all the erasures, interlineations, and additions therein, are the proper handwriting of the said Thomas Duncan.

BENJAMIN STILES,
D. M. MAHON.

Sworn and subscribed, 26th November, 1827, before me,
JACOB HENDEL,
Register.

Indorsed: Certified copy of the will of Thomas Duncan, Esq., deceased.

Cumberland County, *ss.*

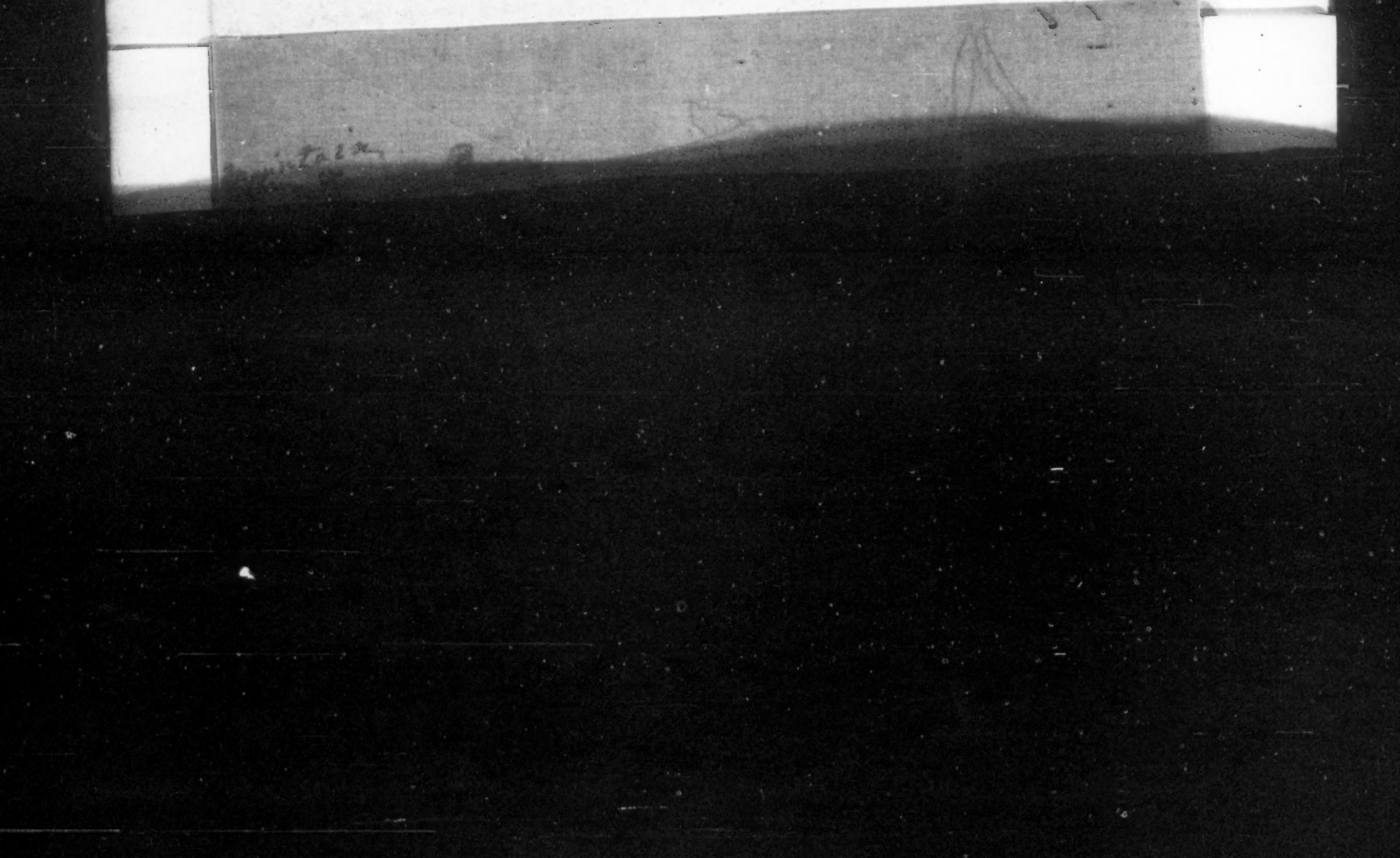
In testimony that the within and foregoing is a true and correct copy of the last will and testament of Thomas Duncan, deceased, as remaining filed in the Register's Office, at Carlisle, in and for the said county, taken from the original, I have hereunto set my hand, and affixed the seal of said office, at Carlisle, the 15th January, A.D. 1834.

SAMUEL WOODBURN,
Register.

Among the records of the Court of Common Pleas, of Dauphin County, to April Term, 1830, No. 277, it is thus contained:

May 31st, copy of Docket entry. Elder, M'Clure, attorney, paid.

Amicable action in debt on bond not exceeding $7500. A agreement. May 31, 1830. Statement filed August 23, 1830. Judgment.



GRIFFITH EVANS
v.
MARTHA DUNCAN, Executrix, and STEPHEN DUNCAN, Esquire, EDWARD STILES, and JOHN D. MAHON, Esquire, Executors of THOMAS DUNCAN, Esquire, deceased. } 277.

Exit fi. fa. No. 2, Nov. 1831.

(Copy of Fi. Fa. Docket Entry.)

Executions to November Term, 1831.

By virtue of a warrant from the Hon'ble Proprietaries, bearing date September the first day, Anno Domini, 1739, I have surveyed and laid out for Samuel Jackson, of East Marlborough, in the County of Chester, a tract of land situate on the north side the mouth Codorus Creek, on the west side Susquehanna River, in Lancaster County, and one hundred and eighty-two acres of land, with the allowance of six per cent., viz., one hundred and forty-two acres on the main, and an island of forty-two acres, in manner as above is described by the draught.

Surveyed May 11, 1743.

Per me, ZACK. BUTCHER,
Deputy.

N.B.—This land was by license granted to Francis Somerfield in the year 1734, of whom Jackson purchased before he obtained his warrant.

Z. BUTCHER.

(For plat, see page 361.)

In testimony that the above is a copy of the original on file in the Surveyor-General's office, I have hereunto set my hand and seal of said office, at Harrisburg, the 7th day of October, 1851.

J. PORTER BRAWLEY,
Surveyor-General.

Fi. Fa. debt, $5190. Int. from 23d Aug. 1830, Prot. R. $2 47½. Atty. $3 50. Shff. H. C. 12½ cts.

August 19. Elder.

GRIFFITH EVANS
v.
MARTHA DUNCAN, Executrix, and STEPHEN DUNCAN, Esquire, EDWARD STYLES, and JOHN D. MAHON, Executors of THOMAS DUNCAN, deceased. } 277. April Term, 1830.

Lands levied and condemned, J. S. $9 20.

Exit Vend. Expo. No. 62, January, 1834.

Copy of Docket Entry.

Executions to January Term, 1834.

Vend. Expo. Debt, $5190. Int. from Aug. 23, 1830. Prot. R. $3 22. Atty. $3 50. Shff. H. C. 12½ cts. J. S. $9 20.

Dec. 20. Elder. 62.

GRIFFITH EVANS
v.
MARTHA DUNCAN, Executrix, and STEPHEN DUNCAN, Esquire, EDWARD STYLES, and JOHN D. MAHON, Executors of THOMAS DUNCAN, Esquire, deceased. } 277. April, 1830.

2d Nov. 1831, unsold for want of buyers, J. F. $7 25.

Al. Vend. Exponas, No. 42, April, 1834.

Copy of Docket Entry.

Executions to April Term, 1834. Feb. 17. Elder. 42.

GRIFFITH EVANS
v.
MARTHA DUNCAN, Executrix, and STEPHEN DUNCAN, Esq., EDWARD STYLES and JOHN D. MAHON, Executors of THOMAS DUNCAN, Esq., deceased. } 277. April, 1830.

Alias vend. exponas. Balance of debt yet due, $762 09. Interest from 7th January, 1834. Prot. R. $3 97; Att'y, $3 50; Sheriff H. C. 12½; J. S. $9 20; J. F. $7 25.

62. January T. 1834. "The sheriff is requested to advertise the sale of the property for Saturday, 22d of March, 1834, and this by the instruction of plaintiff's agent, Thos. Chambers." Sold to Jacob M. Haldeman for $13,775. J. F. $16 83.

April 22, 1834. Rule on the sheriff to bring the money made on this execution into court. April 24, 1834. The court order notice to be given in two papers published in Harrisburg, of the distribution of the money in this case, and fix the 24th day of May next for the distribution. May 23, 1834. The sheriff pays into Court $12,932 41, which is deposited for distribution (advertised). May 24, 1834. The Court request parties who have given notice of their claims to sheriff to file said notices with the prothonotary. Further hearing of the case postponed until the 14th day of July next. Claimants to file a statement of their respective claims with the prothonotary on or before the 10th day of June next. Same day, notice of Farmers and Mechanics Bank filed. May 28, 1834. Notices of the claim of Masterman et al. filed. May 31, 1834. Claim of Hummel J. Lebbicker filed. June 5, 1834. Claim of the Pennsylvania Bank filed.

June 9, 1834. Claim of the Carlisle Bank filed. Same day, Harlan and Nebinger's claim filed. July 5, 1834. James Hopkins files his claim. Same day, claim of R. T. Jacobs, administrator, filed. July 14. 1834. Claim of G. Fisher, Esq., filed. July 14, 1834. The Court admit the claims of James Hopkins and George Fisher, Esq., as filed in time under the order of May 24 last. The claims also admitted of R. T. Jacobs, administrator, No. 12, Nov. 1832. Huston and Irwin. No. 30, Aug. T., 1831. July 15, 1834. The claim of Jacob Updegrove's administrator admitted, No. 99, Aug. T., 1832, and filed. Same day, the court make distribution, vide opinion filed, and ordered that the amount of bail on appeal by any of the parties interested be $100. Same day, Mr. Hopkins appeals. Appeal and recognizance of bail filed. Appeal papers made up and transmitted.

Aug. 2, 1834. Appeal and recognizance of George W. Harris, administrator of R. T. Jacobs, deceased, filed. Appeal papers made up and transmitted. Aug. 7, 1834. Distribution of undisputed part made. See file.

Aug. 7, 1834. Received of John Roberts, of the money in Court in this case, on Juliana Nicklin's claim of bond and mortgage, five thousand and sixteen dollars and sixty-six cents, by distribution of court, made July 15, 1834, as attorney in the case. See authority filed.

THOS. CHAMBERS.

$5016 66

Aug. 7, 1834. Received of the money in Court in this case, on Wm. Masterman's claim on judgment in Circuit Court of U. S., twelve hundred and ninety-two dollars and seventy-seven cents, as attorney in the case. See authority filed.

THOS. CHAMBERS.

$1292 77

Aug. 7, 1834. Received of the money in Court in this case, on Wm. Masterman's and others' claim on judgment in Circuit Court of the U. S., seven hundred dollars and fifty-four cents, as attorney in the case. See authority filed.

THOS. CHAMBERS.

$700 54

Aug. 7, 1834. Received of the money in Court in this case, on the claim of the Farmers' and Mechanics' Bank, a judgment in the Common Pleas of Cumberland County, No. 122, of January T., 1834, one thousand and sixty-five dollars and fifty-nine cents, as attorney in the case. See authority filed.

THOS. CHAMBERS.

$1065 59

Distribution, continued.

Sheriff Fox paid into Court, May 23, 1834, .		$12,932 41
Ordered to be paid, and paid on former distribution, viz.:		
To Juliana Nicklin, . .	$5016 66	
Wm. Masterson's claim,	1292 77	
Same, et al., . .	700 54	
Bank, . . .	1065 59	
		8075 56
Balance to be distributed after decision of Supreme Court, ...		$4856 85

July 6, 1835. Record remitted from Supreme Court, with certificate from the prothonotary, that at a Supreme Court, &c., July 3, 1835, in the case of the appeal of James Hopkins, the decree of the Court of Common Pleas was affirmed, and in the case of the appeal of George W. Harris, administrator of R. T. Jacobs, deceased, the decree of the Court of Common Pleas, which substitutes the said George W. Harris, &c., and other creditors of Stephen Duncan, to the place and room of the creditors of Thomas Duncan, to whom the money in question is given by the court, is reversed, and the residue of the decree is affirmed. Certificates filed with the record.

Bal. for distribution, as above stated, . .			$4856 85
Costs of distribution, Prot. R.,	$1 80		
Advertising, pd. Hamilton, . .	2 00		
			3 80
Balance to be paid to T. Duncan's creditors, ...			4853 05
Deduct shff.'s poundage, omitted above, claimed by sh'ff, ...			64 66
True balance to be paid to Crs. of T. Duncan, dec'd, ...			4788 39
Costs due Prot. R., by G. W. Harris, adm'r, .	$1 12½		
Costs due Prot. R., by Jas. Hopkins estate. Rec'd J. K., of Mr. Reynolds, ...	1 12½		
			2 25
Harris's Sup. Court costs, pd. by Mr. Findlay. Rec'd from Jno. Reynolds, ...			7 25
Hopkins' Sup. Court costs, pd. by Mr. Findlay. Adm'r of J. H. I. F., . . .			7 25

July 6, 1835, Rec'd of John Roberts, four thousand seven hundred and eighty-eight dollars, and thirty-nine cents, the above balance

decreed to the creditors of T. Duncan, dec'd, leaving in court sixty-four dollars and sixty-six cents, sheriff's poundage, for opinion of court.

$4788 39.

JAMES FINDLAY,
Attorney for Creditors of T. Duncan, Dec'd.

Nov. 20, 1837. On motion of John Roberts, Esq., the court order sixty-four dollars, sixty-six cents, the amount retained in court for sheriff's poundage, to be paid over to John Fox, late sheriff.

Rec'd, Nov. 23, 1837, of J. Duck, sixty-four dollars, sixty-six cents, in full of the above amount, ordered to be paid over to Sheriff Fox.

$64 66.

JOHN FOX.

Copy of Entry in Sheriff's Deed-Book.

John Fox, Esq., to Jacob M. Haldeman.

Be it remembered, that on the 22d day of April, 1834, John Fox, Esq., High Sheriff of Dauphin County, acknowledged in open court, in the Court of Common Pleas for said county, a deed-poll, conveying to Jacob M. Haldeman, in fee-simple, for the consideration of $13,775, a certain island, situate in the River Susquehanna, Halifax Township, in said County, containing six hundred and ninety-five acres, thirty-two perches, strict measure, more or less, whereon are erected three two-story houses, and two large barns and small outhouses, together with two large apple-orchards, with the appurtenances; sold as the property of Thos. Duncan, Esq'r, dec'd, by virtue of a writ of alias venditioni exponas, issued out of the Court of Common Pleas of said county, bearing testa the 31st of January, 1834, at the suit of Griffith Evans.

Dauphin County, *sct.*

I, John A. Weir, Prothonotary of the Court of Common Pleas, of said county, do certify that the above and foregoing is a true copy of the record and proceedings in the case of Griffith Evans, against Thomas Duncan's executors, being a full and complete exemplification of the record and proceedings therein, as the same remains now of record in said court (the statement, several writs of fi. fa., venditioni, writ of error and certificate from Supreme Court, after diligent search, not being found). Witness my hand and the seal of said court, this 14th day of October, A.D. 1843.

JOHN A. WEIR,
Prothonotary.

Indorsed: Griffith Evans *v.* Executors of Thomas Duncan.

Copy of record from Dauphin County.

I, John Fox, Esq., High Sheriff of the County of Dauphin, in the Commonwealth of Pennsylvania, send greeting: to all people to whom these presents shall come.

Whereas, by a writ of fieri facias, issued out of the Court of Common Pleas of Dauphin County, to him directed, bearing test the 19th day of August, A.D. 1831, he was commanded that of the goods and chattels, lands and tenements, of Thomas Duncan, Esq., deceased, in the hands of Stephen Duncan, Martha Duncan, Edward Stiles, and John D. Mahon, his executors, in his bailiwick, he should cause to be levied as well a certain debt of five thousand one hundred and ninety dollars, which *which* Griffith Evans, plaintiff, lately in the said court recovered against them, as six dollars and ten cents like money, which, by the said court, were adjudged for his damages which he sustained by occasion of the detention of the said debt, whereof the said defendants were convict, as appears of record, &c., and that he should have those moneys before the judges at Harrisburg at a Court of Common Pleas, there to be held, for the County of Dauphin, on the third Monday in November then next, to render to the said Griffith Evans for his debt and damages aforesaid, and that he should have then there that writ. At which day he, the said sheriff, made return to the said judge, that by virtue of the said writ to him directed, he had seized and taken in execution a certain island, situate in the River Susquehanna, Halifax Township, Dauphin County, containing six hundred ninety-five acres thirty-two perches, strict measure, more or less; thereon are erected three two-story houses, and two large barns and small outhouses, together with two large apple-orchards; also a certain tract of land, situate in Susquehanna Township, Dauphin County, bounded by the River Susquehanna, on the west by lands late of John Carson, Esq., deceased, by lands of John Fox and others, containing one hundred acres, more or less, as the property of Thomas Duncan, Esq., deceased, which remained in his hands unsold, for want of buyers; so that he could not have the moneys in the said writ mentioned at the day and place therein contained, as by the said writ he was commanded. And that the residue of the execution of the said writ was contained in a certain schedule thereto annexed; by which schedule, or inquisition, it appears on the oaths and affirmations of the inquest therein named, that the rents, issues, and profits of the said island and tract of land, with the appurtenances, were not of a clear yearly value sufficient beyond all reprises within the space of seven years to satisfy the debt and damages in the said writ mentioned. Wherefore, by a certain other writ of alias venditioni exponas, issued out of the said court, bearing test the thirty-first day of January last past, I, the said sheriff, was commanded that the said island and tract of land, with the appurtenances, so by him seized by him and taken in execution, I should expose to sale, and that I should have those moneys before the judges at Harrisburg, at a Court of Common Pleas there to be held

the third Monday in April then next, to render to the said Griffith Evans for his debt and damages aforesaid. In pursuance whereof, I, the said sheriff, having given due and timely notice of the time and place of sale, did on the twenty-second day of March, 1834, expose the island aforesaid to sale by public vendue or outcry, and sold the same to Jacob M. Haldeman for the sum of thirteen thousand seven hundred and seventy-five dollars, he being the highest bidder, and that the best price bidden for the same.

Now know ye, that I, the said Sheriff, for and in consideration of the aforesaid sum of thirteen thousand seven hundred and seventy-five dollars, to me in hand paid by the said Jacob M. Haldeman, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, by these presents, according to the directions of the said last-recited writ, and by force and virtue thereof, do grant, bargain, and sell, unto the said Jacob M. Haldeman, his heirs, and assigns, the above described island. Together with all and singular, the buildings, improvements, rights, members, and appurtenances, whatsoever thereunto belonging, or in anywise appertaining; and the reversions and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, property, interest, claim, and demand, whatsoever, of him the said Thomas Duncan, Esq., deceased, of, in, to, or out of the same. To have and to hold the said island, hereditaments, and premises, hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said Jacob M. Haldeman, his heirs and assigns, to his and their only proper use and behoof forever; for such estate, and under such rents and conditions, as the said executors of the said Thomas Duncan, Esq., dec'd, had and held the same at and immediately before the taking thereof in execution, according to the form and effects of the laws and usages of this commonwealth in such case made and provided.

In witness whereof, I, the said Sheriff, have hereunto set my hand and seal, this twenty-second day of April, Anno Domini, one thousand eight hundred and thirty-four.

JOHN FOX, [SEAL.]
Sheriff.

The words "the said executors of" interlined before signing.

Sealed and delivered
in the presence of,
C. A. SNYDER,
SAM'L SHOCH.

Received, on the day of the above-written deed-poll, of and from the therein named Jacob M. Haldeman, the sum of thirteen thou-

sand seven hundred and seventy-five dollars, being in full of the consideration therein mentioned.

JOHN FOX,
Sheriff.

Witness present,
C. A. SNYDER,
SAM'L SHOCH.

Dauphin County, *ss.*

The above-written deed-poll, acknowledged by John Fox, High Sheriff of the County of Dauphin, at a Court of Common Pleas, held at Harrisburg, for the said County, the twenty-second day of April, Anno Domini one thousand eight hundred and thirty-four.

Witness my hand and the seal of said Court, same day and year.
JOHN ROBERTS,
Prothonotary.

Indorsed: Deed-poll. John Fox, High Sheriff, to Jacob M. Haldeman. For a certain island in River Susquehanna, Halifax Township, Dauphin County, containing 695 acres, 32 perches, more or less, late the property of Thomas Duncan, dec'd, sold for $13,775. April, 22, 1834; acknowledged in open court.

This indenture, made this first day of February, in the year one thousand eight hundred and twenty-two, by and between Peter M'Elcar, of the County of Mifflin, and State of Pennsylvania, of the one part, and William Baskins, John Diven, and the following persons, Elizabeth M'Elcar, Isabel Pierce, Catharine M'Elcar, Sarah Shutts, Daniel M. M'Elcar, Martin M. M'Elcar, Daniel Pierce, Jr., James Shutts, children and heirs of the late Daniel M'Elcar, of Tioga County, and State of New York, all formerly of the County of Dauphin, and State of Pennsylvania, granted to the said Peter M'Elcar, witnesseth, that for and in consideration of the sum of ten thousand dollars, in hand paid to the said Wm. Baskins, John Diven, and the said children and heirs of Daniel M'Elcar, before the sealing of these presents, the said grantors do grant, sell, and convey to the said Peter M'Elcar, and his heirs forever, all their right, title, interest, and claim to or in a certain tract or parcel of land, lying and being in and upon an island in the River Susquehanna, near the mouth of the Juniata, in Dauphin County, in the State of Pennsylvania, it being the largest of three islands lying near the same place, and commonly called the Big Island, Baskins' Island, or M'Elcar's Island. It being the same whereon the said John Diven, Wm. Baskins, and Daniel M'Elcar formerly resided, and from which they removed about the year 1802. To have and to hold the said

island, with the appurtenances, to him, the said Peter M'Elcar, and his heirs forever.

In testimony whereof, we hereto set our hands and seals, this day and year first above written.

WILLIAM BASKINS, [SEAL.]
JOHN DIVEN, [SEAL.]
ELIZABETH M'ELCAR, [SEAL.]
ISABEL PIERCE, [SEAL.]
DANIEL PIERCE, JUN'R, [SEAL.]
CATHARINE M'ELCAR, [SEAL.]
SARAH SHUTTS, [SEAL.]
JAMES SHUTTS, [SEAL.]
DANIEL M. M'ELCAR, [SEAL.]
MARTIN M. M'ELCAR. [SEAL.]

Signed, sealed, and delivered in
the presence of
WILLIAM DIVEN,
JOHN CULVER.

Isabel Pierce is one of the heirs of Daniel M'Elcar, married to Daniel Pearce, Jun'r.

Sarah Shutts is one of the heirs of Daniel M'Elcar, married to James Shutts.

Pennsylvania, *ss.*
[L. S.]

Personally appeared before me, the undersigned, one of the Justices of the Peace of the Commonwealth of Pennsylvania, in and for the County of Bradford, William Diven and John Culver, the persons whose names are subscribed as witnesses to this deed, who being duly sworn and examined according to law, do say, that they were present at the execution of this deed, and saw the several persons whose names are subscribed to this deed as grantors, and whose names are mentioned in the deed, viz.: William Baskins, John Diven, and the children and heirs of Daniel M'Elcar, sign, seal, and deliver the same for the purposes therein mentioned. In testimony whereof, I have hereto set my hand and seal, at Bradford County, this 23d day of August, 1822.

THOMAS WINTOW,
J. P.

Dauphin County, *ss.*

Recorded, March 13th, 1840, in the office for recording of deeds, &c., in and for said county, in Deed Book M, vol. 2d, page 74, &c. In testimony whereof, I have hereunto set my hand and affixed the seal of said office, at Harrisburg, the day and year aforesaid.

JESSE WINDSOR,
For JACOB SHELL,
Recorder.

Indorsed: Deed, William Baskins et al., to Peter M'Elcar. C. A. S.

In the name of God. Amen.

I, Patrick M'Elcar, of Middle Paxton Township, Dauphin County, and Commonwealth of Pennsylvania, calling to mind the mortality of my body, and that it is appointed to all men once to die, do make and ordain this my last will and testament.

After recommending my soul to God who gave it, and my body to the earth to be buried in a Christian and decent manner—I do give and bequeath and dispose of such worldly estate, wherewith it hath pleased God to bless me in this life, in the following manner (viz.), I do will that all my estate, real and personal, shall be equally divided among my sons, Jacob M'Elcar, Peter M'Elcar, Daniel M'Elcar, and Martin M'Elcar, subject, nevertheless, to the following bequeathments, viz.

First. I do will that my daughter, Mary Herron, shall be paid the sum of six pounds specie.

Second. That my daughter Elizabeth shall be paid the sum of six pounds specie.

Third. That my son John shall be paid the sum of six pounds specie.

Fourth. That my son George shall be paid the sum of six pounds specie.

Fifth. That my son-in-law, Anthony Dunlevy, shall be paid the sum of six pounds specie.

And lastly, That my son Thomas shall hold the piece of land struck off to him, where he now lives, free from any claim of any of my heirs.

And I do hereby nominate and appoint my sons, Jacob M'Elcar, Peter M'Elcar, Daniel M'Elcar, and Martin M'Elcar, executors of this my last will and testament. And I do hereby publish and declare this to be my last will and testament, and no other.

In testimony whereof, I have hereunto set my hand and seal, this twenty-fifth day of December, 1796.

his
PATRICK ⋈ M'ELCAR. [SEAL.]
mark.

In presence of
JAMES MITCHELL,
his
JOHN ⋈ WALLACE.
mark.

Dauphin County, *ss.*

On the 7th day of January, 1797, before me, the subscriber, per-

sonally appeared John Wallace, one of the subscribing witnesses to the above instrument, who, being duly qualified, did say that heard the testator.

Dauphin County, *ss.*

On the 7th day of January, 1797, before me, the subscriber, personally appeared James Mitchell and John Wallace, who being duly qualified, did depose and say, that they saw and heard the testator, Patrick M'Elcar, sign, seal, and publish the above instrument as and for his last will and testament, and that, at the time of his so doing, he, the said testator, was of sound mind, memory, and understanding.

ANDREW FORREST,
Register.

Dauphin County, *ss.*

I, John Hoffman, register for the probate of wills, and granting letters of administration, in and for said county, do hereby certify this to be a true copy of the last will and testament of Patrick M'Elcar, which said will remains filed in the register's office at Harrisburg.

In testimony whereof, I have hereunto set my hand and affixed the seal of said office, this 30th day of September, Anno Domini 1842.

JOHN HOFFMAN,
Register.

Indorsed: Copy of the last will and testament of Patrick M'Elcar, deceased. C. A. S.

This indenture, made and concluded on this twenty-fifth day of January, in the year one thousand eight hundred and twenty-two, by and between Thomas M'Elcar and Martin M'Elcar, of the County of Dauphin, and State of Pennsylvania, of the one part, and Peter M'Elcar, of the County of Mifflin, and same State, of the other part, witnesseth, that for and in consideration of the sum of two thousand five hundred dollars, to them in hand paid, or caused to be paid, they, the said Thomas and Martin M'Elcar, do, by these presents, grant, convey, and sell to the said Peter M'Elcar, all their right, title, interest, and claim, to or in a certain island or tract of land, lying and being in the River Susquehanna, in Dauphin County, near the mouth of the River Juniata, it being the largest of three islands lying near each other, and being the same whereon Patrick M'Elcar, the father of the parties to this deed, lived and died; the said island containing, by estimate, eight hundred acres or thereabout, to have and to hold the said above-described island, or tract of eight hundred acres, to him and his heirs forever, together with the appurtenances.

In testimony whereof, we have severally affixed our hands and seals to this deed, this day and year first above written.

THOMAS M'ELCAR, [SEAL.]
his
MARTIN ⋈ M'ELCAR. [SEAL.]
mark.

Witness present,
WM. JONES,
JOHN WARNER.

Pennsylvania, *ss.* Dauphin County.

Personally appeared before me, the subscriber, one of the justices of the peace in and for the County of Dauphin, Thomas M'Elcar and Martin M'Elcar, who, being severally examined by me, acknowledged that they signed, sealed, and delivered the within deed of bargain, all to Peter M'Elcar, on the day of the date thereof, for the purposes therein mentioned.

In testimony whereof, I have hereto set my hand and seal, this 23d day of February, 1827, at Harrisburg.

WILLIAM GRAYDON.

Dauphin County, *ss.*

Recorded March 13th, 1840, in the office for recording of deeds, &c., in and for the county aforesaid, in Deed Book M, vol. 2, page 73.

In testimony whereof, I have hereunto set my hand and affixed the seal of said office, at Harrisburg, the day and year aforesaid.

JESSE WINDSOR, for
JACOB SHELL,
Recorder.

Indorsed: Deed. Thomas M'Elcar and Martin M'Elcar to Peter M'Elcar. C. A. S.

This indenture, made and executed this twenty-seventh day of November, in the year one thousand eight hundred and twenty-two, by and between George Clark, of Mercer County, and State of Pennsylvania (formerly of Dauphin County), of the one part, and Peter M'Elcar, of Mifflin County, in the same State, of the other part, witnesseth, that the said George Clark, for the sum of three thousand dollars, to him paid by Peter M'Elcar, before the execution of this deed, granted, sold, released, and conveyed, to the said Peter, all his right of the said George, in, to, or upon a certain island in the Susquehanna River, in Dauphin County, near the mouth of the Juniata, it being the same island whereon the said George Clark formerly resided, and where his father lived and died, and which he was dispossessed of by Thomas Duncan, Esq., about the year 1802, to

have and to hold the said island to him, the said Peter, and his heirs forever.

In testimony of which, I have hereto set my hand and seal, this day and year first above written.

GEORGE CLARK. [L. S.]

Witnesses present,
AND'W DENNISTON,
WILLIAM ELDER.

Pennsylvania, *ss.*
[L. S.] Mercer County, *ss.*

Personally appeared before me, the subscriber, one of the Commonwealth's justices of the peace, in and for Mercer County, the above-named George Clark, and acknowledged that he signed, sealed, and delivered the above deed, according to the date and tenor thereof, for the purposes therein mentioned.

Witness my hand and seal at Mercer aforesaid, this 9th day of December, 1822.

AND'W DENNISTON.

Indorsed: Deed, George Clark, to Peter M'Elcar.

Dauphin County, *ss.*

Recorded March 13th, in the office for recording of deeds, &c., in and for said county, in Deed Book M, vol. 2d, page 74. In testimony whereof, I have hereunto set my hand and affixed the seal of said office, at Harrisburg, the day and year aforesaid.

JESSE WINDSOR,
For JACOB SHELL,
Recorder.

Indorsed: Deed, Geo. Clark to Peter M'Elcar. C. A. S.

This indenture, made this first day of August, in the year one thousand eight hundred and thirty-nine, by and between Peter M'Elcar, of Lewistown, in the State of Pennsylvania, of the one part, and Isaac M. Fisher, Esq., a citizen of the State of Delaware, of the other, witnesseth, that whereas, in the latter part of the year one thousand seven hundred and forty-nine, Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, settled and made improvements in and upon the island called the Big Island, situate in the River Susquehanna, near to and above the mouth of the River Juniata, and thereby acquired right and title to the whole of the said island, containing eight hundred acres, more or less; which right and title of the said Thornton, Baskins, Clark, and Paxton, have, by sundry descents, devises, transfers, and conveyances, been transferred to and all now vested in the said Peter M'Elcar.

And whereas one Thomas Duncan, Esq., fraudulently obtained

possession of the said island, in the month of June, in the year one thousand eight hundred and two, by unlawfully expelling the tenants of the said Peter M'Elcar out of and from the said island; and by fraudulently and unlawfully expelling from the said island, the other possessors of the said island.

And whereas, the said Peter M'Elcar, in the month of April, and also in the month of December, in the year one thousand eight hundred and twenty-two, made actual personal entry into, over, and upon the said island, and each and every part and parcel thereof, and took actual possession of the same, for the purpose of barring and preventing the operation of the statute of limitations, upon or against the title or rights of entry of him, the said Peter M'Elcar, to and in the said island, and was so in actual possession of the said island and every part thereof, in April and in December, in the year one thousand eight hundred and twenty-two; and whereas the said Peter M'Elcar, in the month of July, in the year one thousand eight hundred and thirty-nine, made actual personal entry into, over, and upon the said island, and each and every part and parcel thereof, for the purpose of taking possession of the same, and of barring and preventing the operation of the statute of limitations upon and against the title and right of entry of him, the said Peter M'Elcar, of and into the said island, and was so in actual possession of the said island, and every part thereof; now, in consideration of the sum of fifteen thousand dollars, to me this day in hand paid by the said Isaac M. Fisher, Esq., a citizen of the State of Delaware, I, the said Peter M'Elcar, hereby grant, convey, alien, release, and set over to the said Isaac M. Fisher, and his heirs forever, all my right, title, interest, claim, and demand of, in, and to the said island, called the Big Island or M'Elcar's Island, situate in the River Susquehanna, near and above the mouth of the Juniata River, in the County of Dauphin, and State of Pennsylvania, with the appurtenances, to have and to hold the said island, containing eight hundred acres, more or less, to the said Isaac M. Fisher, Esq., and his heirs forever, as far as I now hold the same, and no farther.

In witness whereof, I have hereunto set my hand and seal, this first day of August, 1839.

PETER M'ELCAR. [L. S.]

Signed, sealed, delivered, and
accepted in the presence of,
CH. D. MATHEWS,
DANIEL RICHEY,
GEORGE BUMBAUGH.

Mifflin County, Pennsylvania, *ss.*

Personally appeared before the undersigned, a president judge of the Court of Common Pleas of the Commonwealth of Pennsylvania,

in and for the County of Mifflin, Peter M'Elcar, the grantor in the within deed, to Isaac M. Fisher, Esq., a citizen of the State of Delaware, and acknowledge the same to be the act and deed of him, the said Peter, and that he signed, sealed, and delivered the same, according to the tenor thereof.

Witness my hand and seal, this ninth day of August, in the year 1839.

THOS. BURNSIDE. [SEAL.]

I acknowledge to have received of Isaac M. Fisher, a citizen of the State of Delaware, the sum of fifteen thousand dollars, in full consideration of the above and foregoing deed, on the day of the date thereof.

Witness my hand and seal, August the 9th, 1839.

PETER M'ELCAR. [SEAL.]

Witness present,
F. C. MERKLEIN.

Dauphin County, *ss.*

Recorded, May 31st, 1850, in the office for recording of deeds, &c., in and for said county, in Deed Book V, vol. 2, page 162, &c.

In testimony whereof, I have hereunto set my hand and affixed the seal of said office, at Harrisburg, the day and year aforesaid.

ABRAM. FREANER,
Recorder.

Indorsed: Deed. Peter M'Elcar, a citizen of Pennsylvania, to Isaac M. Fisher, a citizen of the State of Delaware.

C. A. S.

In the name of God. Amen.

I, Robert Boyd, of Upper Paxton Township, Lancaster County, and State of Pennsylvania, being weak of body, but of sound and perfect mind and memory, blessed be the Almighty God for the same, do make and publish this my last will and testament, in manner and form following, viz.: First. I give and bequeath unto Sophie Nailer, one milch cow, to be which she pleases out of mine; also, one two year old bay filly. Secondly. I do give and bequeath unto my beloved wife, Elizabeth Boyd, with her child by me, with my three daughters, Sarah, Elizabeth, and Margaret, now living in the Kingdom of Ireland, together with my daughter Catharine, and the aforesaid Sophia Nailer, with her child by me, not yet born, to be all equally concerned, and to draw equal shares alike, out of the sale of my real estate, which I do will and allow to be sold by my executors to the best advantage, but not before three years after my decease. And I do will and allow the benefits, arising either by cropping or

renting out the aforesaid premises, to the proper use and behoof of the aforesaid Catharine, Sophia, and her child not yet born, allowing the clear land to be put into saleable repair, within that term or time. I do further allow my executors to vendue all my personal estate, excepting the aforesaid, within six months after my decease, and the money arising therefrom, together with my bonds, notes, book debts, &c., to be collected in as soon as possible, and to pay thereout my funeral charges first, afterwards all my other just debts, and in case there be any remainder, I do allow it to be equally between my two children, viz., the one by my wife, Elizabeth Boyd, now in Ireland, and my other by Sophia Nailer, not yet born, but in case either my wife Elizabeth, or any of my children, &c., dies, then their share or shares is to be equally divided between the survivors, and in case none of my aforesaid, in Ireland, comes into this Province, before my estate be sold, or shortly after, then I do allow my executors to write to Ireland, to know the name or names of the survivors; and upon an answer properly authenticated, to convey their full shares by some safe opportunity. And I do hereby constitute and appoint my trusty and well-beloved friends, William Cook and George Clark, to be my sole executors of this, my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal, this thirteenth day of May, in the year of our Lord, one thousand seven hundred and eighty-five, Anno Domini 1785.

Further, I do will and allow my bed, bedding, and bed furniture, to the aforesaid Sophia Nailer, her heirs and assigns forever.

ROBERT BOYD. [L. S.]

Witness present,
WILLIAM COOK,
WILLIAM BASKINS,
his
SIMON ⋈ WILLIAMS.
mark.

Dauphin County, *ss.*

I do hereby certify, that the above is a true copy of the original as it remains of record in the Register's Office, at Harrisburg.

In testimony whereof, I have hereunto set my hand and seal of office, the 12th day of December, 1796.

ANDREW FORREST,
Register.

Indorsed: Copy of the last will and testament, Robert Boyd, deceased. C. A. S.

A just and true inventory of the real and personal estate of Robert Boyd, deceased, as taken by us, May 16, A. D. 1785.

WILLIAM BASKINS,
PATRICK MARTIN.

	£	s.	d.
To riding mare, and saddle, and wearing apparel, &c., .	5	12	6
6 small plates, basin, and soup dish, . . .		10	0
box and drawers, ...		8	4
old irons, hammer, saw, pot, and skillet, . . .	1	7	0
3 casks and kegs, ...		4	3
2 axes, mall, wedge, and grubbing hoe, . . .		17	6
3 hoes, spade, and sith, ...		13	6
bed and bedding, ...	1	1	9
plow irons, harow, sled, and grindstone, . . .	1	12	6
3 ewes and 2 lambs, ...	1	10	0
3 cows and 2 steers, ...	13	10	0
horse and phily, ...	13	10	0
canoe, and cutting knife, and steel, . . .		16	6
grain in the ground, per acre, ...		7	6
plantation, ...	95	12	6
a table, ...		1	6
one swine, ...		13	0
	137	15	4

Dauphin County, *ss.*

The above is a true copy of the original, as it remains in the Register's Office at Harrisburg.

Witness my hand and seal of office, the 12th day of December, 1796.

ANDREW FORREST,
Register.

Indorsed: Copy of inventory, Robert Boyd, deceased.

Amendment of Bill.

Afterwards, to wit, on the eighth day of May, A. D. 1851, the complainant, by his solicitor, W. L. Hirst, Esquire, presents an amendment to the Bill of Complaint, which, being filed, is in the words and of the tenor following, to wit:

Amendment of bill to be inserted at page 21 of original bill, between folio 192 and folio 194, as folio 193, and part of the original bill.

Your orator states, that on the 18th day of December, in the year 1799, the legal title of Big Island, No. 3, was vested in John Penn and Richard Penn, and their heirs, the legal representatives of William Penn, Esq., the original grantee of the Province of Pennsylvania, as stated in the bill; that by the law, custom, and equity, of the Province of Pennsylvania, and of the Proprietary Land Office, the legal title of the island was so vested in Richard and John Penn, and their heirs, as express, direct, and continuing trustees, in trust

renting out the aforesaid premises, to the proper use and behoof of the aforesaid Catharine, Sophia, and her child not yet born, allowing the clear land to be put into saleable repair, within that term or time. I do further allow my executors to vendue all my personal estate, excepting the aforesaid, within six months after my decease, and the money arising therefrom, together with my bonds, notes, book debts, &c., to be collected in as soon as possible, and to pay thereout my funeral charges first, afterwards all my other just debts, and in case there be any remainder, I do allow it to be equally between my two children, viz., the one by my wife, Elizabeth Boyd, now in Ireland, and my other by Sophia Nailer, not yet born, but in case either my wife Elizabeth, or any of my children, &c., dies, then their share or shares is to be equally divided between the survivors, and in case none of my aforesaid, in Ireland, comes into this Province, before my estate be sold, or shortly after, then I do allow my executors to write to Ireland, to know the name or names of the survivors; and upon an answer properly authenticated, to convey their full shares by some safe opportunity. And I do hereby constitute and appoint my trusty and well-beloved friends, William Cook and George Clark, to be my sole executors of this, my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal, this thirteenth day of May, in the year of our Lord, one thousand seven hundred and eighty-five, Anno Domini 1785.

Further, I do will and allow my bed, bedding, and bed furniture, to the aforesaid Sophia Nailer, her heirs and assigns forever.

ROBERT BOYD. [L. S.]

Witness present,
WILLIAM COOK,
WILLIAM BASKINS,
his
SIMON ⋈ WILLIAMS.
mark.

Dauphin County, *ss.*

I do hereby certify, that the above is a true copy of the original as it remains of record in the Register's Office, at Harrisburg.

In testimony whereof, I have hereunto set my hand and seal of office, the 12th day of December, 1796.

ANDREW FORREST,
Register.

Indorsed: Copy of the last will and testament, Robert Boyd, deceased. C. A. S.

A just and true inventory of the real and personal estate of Robert Boyd, deceased, as taken by us, May 16, A. D. 1785.

WILLIAM BASKINS,
PATRICK MARTIN.

	£	s.	d.
To riding mare, and saddle, and wearing apparel, &c., .	5	12	6
6 small plates, basin, and soap dish, . . .		10	0
box and drawers, ...		8	4
old irons, hammer, saw, pot, and skillet, . . .	1	7	0
3 casks and kegs, ...		4	3
2 axes, mall, wedge, and grubbing hoe, . . .		17	6
3 hoes, spade, and sith, ...		13	6
bed and bedding, ...	1	1	9
plow irons, harow, sled, and grindstone, . . .	1	12	6
3 ewes and 2 lambs, ...	1	10	0
3 cows and 2 steers, ...	13	10	0
horse and phily, ...	13	10	0
canoe, and cutting knife, and steel, . . .		16	6
grain in the ground, per acre, ...		7	6
plantation, ...	95	12	6
a table, ...		1	6
one swine, ...		13	0
	137	15	4

Dauphin County, *ss.*

The above is a true copy of the original, as it remains in the Register's Office at Harrisburg.

Witness my hand and seal of office, the 12th day of December, 1796.

ANDREW FORREST,
Register.

Indorsed: Copy of inventory, Robert Boyd, deceased.

Amendment of Bill.

Afterwards, to wit, on the eighth day of May, A. D. 1851, the complainant, by his solicitor, W. L. Hirst, Esquire, presents an amendment to the Bill of Complaint, which, being filed, is in the words and of the tenor following, to wit:

Amendment of bill to be inserted at page 21 of original bill, between folio 192 and folio 194, as folio 193, and part of the original bill.

Your orator states, that on the 18th day of December, in the year 1799, the legal title of Big Island, No. 3, was vested in John Penn and Richard Penn, and their heirs, the legal representatives of William Penn, Esq., the original grantee of the Province of Pennsylvania, as stated in the bill; that by the law, custom, and equity, of the Province of Pennsylvania, and of the Proprietary Land Office, the legal title of the island was so vested in Richard and John Penn, and their heirs, as express, direct, and continuing trustees, in trust

for and behoof of Thomas M'Elcar, Jacob M'Elcar, Daniel M'Elcar, Martin M'Elcar, and Peter M'Elcar, and their heirs; and also in trust for and behoof of George Clark, William Baskin, and John Diven, respectively, and their heirs and equitable representatives, holding or rightly claiming the equitable estate of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, or either of them, as vested in them, or either of them, at any time before the year 1755, or on the first day of September, 1749, or as vested in Alexander Stein in the year 1755, as stated.

That John Penn and Richard Penn held the legal estate in the island on the 18th day of December, 1799, under the direct, express, and continuing trust, which arose and was created and declared by the Proprietaries of the Province of Pennsylvania, the legal successors of William Penn, Esq., in favor of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, severally, and their heirs, at or immediately after the time they respectively settled upon and took possession of the Big Island in 1749; that said trust was created on the 1st day of September, 1749, by the Proprietaries of Pennsylvania, and was declared, and was declared to be direct, express, and continuing, until the purposes of said trust should be fulfilled and executed between the parties thereto, and their heirs and legal and equitable representatives; that said trust was so created and declared by the Proprietaries, the owners of the legal estate in the Big Island. By which trust, the Proprietaries charged themselves, their heirs, successors, and assigns of the legal estate in the Big Island, directly, expressly, and continuously, until the trust shall be fulfilled and discharged on the part of the owners of the legal estate of and in the island, and be by them fully executed. That said trust was so created and declared for the benefit and behoof of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, devisees, successors, and assigns, as cestui que trust in equitable fee-simple, holding the equitable estate in fee-simple of and in the Big Island, under and by the equitable right and title of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, acquired by them in the year 1749, as stated.

That the terms and stipulations of said trust, at the time of its original creation and declaration by the Proprietaries, on the 1st day of September, 1749, were in substance as follows, to wit: the proprietaries granted and gave permission to Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, severally to enter upon and take possession of the Big Island as actual settlers, according to the custom and usage of the Land Office of Pennsylvania, regulating actual settlements upon the vacant and unappropriated lands of the Proprietaries in the Province, to divide the island amongst themselves, by lines and boundaries, in such way that no one person should hold or possess more than 300 acres of the island; the said grantees and settlers to build houses on their

respective portions or allotments of the island, and each settler to go into possession of his house and live and reside there, clear and cultivate a portion of the ground, and make his settlement and improvement the place of his residence, and the means of supporting himself and family; that the grantees and settlers on the island should severally hold and possess their several portions of the island so settled upon and improved, in equitable fee-simple, to them and their heirs and assigns, holding, or having equitable right to hold, the possession of the island, and to enjoy the usufruct of the same forever, as actual settlers, subject only to the payment to the Proprietaries at their Land Office, in the Province, of the sum of £15 10*s.* currency of Pennsylvania, or $41 33⅓ for each and every hundred acres of said island, or in that proportion for each acre, with lawful interest until paid, as stated in this bill. That it was part of said express, decreed, and continuing trust, that the purchase-money should and did constitute a lien upon the equitable estate on the island, binding the same expressly, directly, and continuously, into whosoever hands the equitable estate might come, whether heirs, devisees, or assigns, until the purchase-money and the interest thereon should be paid, to the holder of the legal estate in the island, by the holder of the equitable estate in the same; the holders and owners of the equitable estate in the island having always and continually the right to hold and enjoy the possession and occupation of the island, unless removed therefrom by due course of law and judicial process, by the Proprietaries, for the recovery of the purchase-money and interest aforesaid; the possession of the island in that case to be restored to the equitable owners by the Proprietaries, as soon as the purchase-money and interest of the island should be received by the Proprietaries, or their successors or assigns, out of the purchase-money of the island; the holders of the legal estate holding the same at all times in trust for the holders of the equitable estate in fee-simple.

That, under the direct and continuing trust so declared, on the first day of September, 1749, the Proprietaries became the trustees, for themselves and their heirs, of the legal estate in the island, in trust for Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, severally, who became and were the cestui que trusts for themselves, their heirs and assigns, continually, holding the possession or the right of possession of the island. That the Proprietaries held the legal estate subject to the following conditions and limitations, to wit: to hold and maintain the legal title of and in the island, in direct and continuing trust, to be conveyed to the holders of the equitable estate, in fee-simple in the island, holding the title of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, or of either of them, whenever such holder of the equitable estate should pay to the holder of the legal estate the purchase-money due by such holder of the equitable estate, at the rate

of $41 33⅓ for each hundred acres, as aforesaid. That said direct and continuing trust bound the Proprietaries and their successors and heirs so long as they held the legal estate in the Big Island, in favor of the holders of the equitable estate above stated.

That said trust bound Thomas Duncan, Esq., and his estate in the island, from the time of his purchase of the interest of the Proprietaries, in the same manner it had bound the Proprietaries in favor of the owners and holders of the equitable estate in the island, and particularly in favor of Peter M'Elcar, and continued to bind the Hon. Thos. Duncan until the period of his death, as stated, and during all the time that he held possession of the island as stated.

That said direct and continuing trust bound Stephen Duncan, Esq., and his estate in the island, in favor of Peter M'Elcar and his heirs and assigns, in the same manner that it had bound the Hon. Thomas Duncan during all the time said Stephen held possession of the island as stated.

That said direct and continuing trust has bound Jacob M. Haldeman, Esq., and his estate in the island (in the same manner as it had bound the Hon. Thos. Duncan) during all the time that he has held possession of the island as stated, in favor of Peter M'Elcar, until the first day of August, 1839, in favor of your orator; and it was a further condition of said trust, that if, at any time, the holder of the legal estate in the island should enter into possession of the same, claiming to hold it by virtue of his legal title, that whilst so in possession of the island, the holder of the legal estate (the purchase-money of the island being due and unpaid to the holder of the legal estate at the time of his entry) should and would keep a fair and just account of the rents and profits of the island coming to the hands of the holder of the legal estate so in possession; and after deducting therefrom the reasonable value of the necessary repairs of the island, apply the residue of the rents and profits to the payment and discharge of the purchase-money and interest of the island, and give a fair and just account, at reasonable times, to the holder of the equitable estate in the island, of the amount of the rents and profits so received from the island, and applied to the repairs and to the purchase-money, and that Hon. Thomas Duncan, Stephen Duncan, Esq., and Jacob M. Haldeman, Esq., were each and severally bound by this duty as trustees, to account for the rents and profits, so long as each of them has held possession of the island.

That said trust, direct and continuing, is yet in existence, and binds Jacob M. Haldeman, Esq., in favor of your orator, the rightful claimant of the equitable fee-simple in the island.

That, at the time Hon. Thomas Duncan came into possession of the island, about the first day of June, 1802, he had notice of this trust; by his notice of the equitable fee-simple title of the persons who lived on and possessed island in the month of May, 1802, as stated; that Stephen Duncan had notice of this trust at the time he

took possession of the island, by his knowledge of the equitable fee-simple title of Peter M'Elcar to the island at that time, as stated.

And that Jacob M. Haldeman had notice of this direct and continuing trust, as stated, at the time he took possession of the island, in the same way and by the same means that he had knowledge of the title of Peter M'Elcar, as stated in the bill.

That, in violation of his trust, the Hon. Thomas Duncan, from the time he came into possession of the island, on the first day of June, 1802, wrongfully, as stated in the bill, continually set up a false title to the island, and supported the same, under color of inequitable instruments, before the courts, as stated, whereby Peter M'Elcar was inequitably hindered from obtaining the possession of said island; and said Hon. Thomas Duncan continually, from the time he came into possession of the island, in 1802, concealed the amounts of the rents and profits received by him, and neglected and refused to render any amount of the same to the equitable owners; whereby the equitable owners, and particularly Peter M'Elcar, were kept in ignorance of the true state of their title to the island, because said Hon. Thomas Duncan neglected and refused to inform the equitable owners, and particularly Peter M'Elcar, that the purchase-money had been paid by the rents of the island.

That, from the time Stephen Duncan came into possession of the island, as stated, he continually set up a false title to the same, and supported such false title by inequitable instruments before the courts, and particularly by alleging falsely that some of the owners of the equitable estate in said island, had, at some time, given good and valid acquittances and releases for their right and title to and in the island; and during all the time that Stephen Duncan was in possession of the island, he inequitably concealed from Peter M'Elcar the amount and value of the rents and profits of the island received by said Stephen Duncan, and neglected and refused to render any account thereof to Peter M'Elcar, and neglected and refused to inform said Peter that the purchase-money of the island had been paid by the rents and profits received by him and by his father, Hon. Thomas Duncan; whereby Peter M'Elcar was kept in ignorance of the true state of his title to said island, and was prevented from recovering the possession thereof.

And your orator states, that Hon. Thomas Duncan, in his lifetime, had received of the rents and profits of the islands far more than sufficient, after paying all necessary repairs and charges, fully to pay and discharge the whole amount of the original purchase-money and interest.

That, from the time Jacob M. Haldeman, Esq., came into possession of the island, as stated, he has continually set up a false title to the same, and has supported the same by color of inequitable instruments before the courts, and has, at all times, concealed the amount of the rents and profits of the island received by him from

Peter M'Elcar before the first day of August, 1839, and since that time from your orator, and has neglected and refused to inform Peter M'Elcar, before the first day of August, 1839, that the purchase-money of the island was paid; and has neglected and refused to inform your orator of that fact since the date last aforesaid, whereby Peter M'Elcar, before the first day of August, 1839, was at all times kept in ignorance of the true state of his title, and whereby your orator has at all times been kept of the true state of his title to the island, until the filing of this bill inequitably.

Your orator therefore states, that all times since the first day of June, 1802, until the time of filing this amended bill of complaint, the true, rightful, and equitable owners of the Big Island, as stated in this bill, have continually been kept in a state of ignorance, doubt, and uncertainty as to the actual state and condition of their true and equitable title in fee-simple to said island, and the possession thereof in equitable fee-simple, by the frauds, deceits, concealments, neglects, and refusals of Hon. Thomas Duncan, Stephen Duncan, Esq., and Jacob M. Haldeman, and especially, that Peter M'Elcar, at all times before the first day of August, 1839, and your orator, before and since the last date, up to the filing of this amended bill, have been so kept in ignorance and doubt as to the true state of their equitable title in fee-simple in the island. and that the said equitable owners (especially Peter M'Elcar) were at all times, from June the first, 1802, to August first, 1839, kept in doubt and ignorance of the true state of their equitable, and of the ways and manner in which their title to the island would be treated by a Court of Equity, if brought before it, by the frauds, deceits, and concealments, neglects and refusals of the said Hon. Thomas Duncan, Stephen Duncan, Esq., and Jacob M. Haldeman, Esq., trustees as stated in this bill.

Your orator states, that on and from the first day of August, 1839, to the filing of this amended bill, your orator was kept in a state of ignorance, doubt, and uncertainty as to the true state of his equitable title to said island, and of the manner and way in which said title would be treated if brought before it, by the frauds, deceits, neglects, and refusals of Hon. Thomas Duncan, Stephen Duncan, Esq., and Jacob M. Haldeman, Esq.

That Hon. Thomas Duncan, Stephen Duncan, Esq., and Jacob M. Haldeman, Esq., so being in possession as stated, by their fraudulent concealment of the equitable title of Peter M'Elcar and your orator, prevented and hindered Peter M'Elcar from prosecuting any action for said island after June first, 1831, and so prevented and hindered your orator until the filing of this bill.

And your orator states, that at the trial of the action of ejectment, wherein Peter M'Elcar was plaintiff, and Stephen Duncan, William Elliott, and others, were defendants, in the Circuit Court of Dauphin County, in March, 1831, as referred to in this bill, Stephen Duncan, by himself and his counsel, set up and alleged as and for his defence

in that cause, that the plaintiff, Peter M'Elcar, was not entitled to recover the island in that action, because he did not bring the purchase-money of said island into court, and pay it to Stephen Duncan the defendant, to whom said Stephen then and there alleged and averred, in open court, that the said purchase-money of the island was then, in March, 1831, due by Peter M'Elcar, the owner in fee simple of the equitable estate in fee-simple in said island, Stephen Duncan being at that time the holder of the legal estate. By which means Stephen Duncan then prevented Peter M'Elcar from recovering the possession of the island (inequitably), as will appear by the record of said action of ejectment, and the opinion of Hon. John Ross, therewith filed, when the same shall be produced in evidence at the hearing.

And your orator states, that the original evidence of the creation and declaration, on the first day of September, 1749, of the express, direct, and continuing trust by the Proprietaries, as trustees of the Big Island, and of the legal estate in the same, in favor of Joseph Thornton, Michael Paxton, George Clark, and Francis Baskins, severally, and their heirs and assigns, as *cestui que trusts*, in equitable fee-simple, has been lost by time, and the accidents of a century, and cannot be produced before this Court; that all those persons who lived in 1749, and were present at the creation and declaration of the said trust, are long since dead, and cannot be produced to testify.

That the evidence of the creation, declaration, and continuing existence of such trust, is the possession under the grant which created the trust, by the grantors, for more than half a century, in accordance with the trust, and the acknowledgment in open Court, in March, 1831, by Stephen Duncan, who, at that time, was the holder and owner of the legal estate in the island, that said trust was then in existence, and in full force.

That the parties who have been in possession of the Big Island from the first day of June, 1802, to the present time, have severally obtained the possession of it wrongfully, and against equity, and have continually, from the first day of June, 1802, to the filing of this bill, set up a false title to the island, under color of instruments and evidence against equity; that the said false title has been continually undergoing investigation in the courts of law and equity, and in laboring to pursue such investigations, by the holder of the equitable title to the island, as stated, in pursuit of his right; that during all the period from the first day of February, 1822, to the filing of this bill, the wrongful possessors of the island have been protected in their possession against equity, and have, for near half a century, used the rents, profits, and proceeds of the island, continually, as the means of delaying, hindering, and preventing the true equitable owners from recovering their estate.

And your orator prays, that the defendants, Jacob M. Haldeman,

Esq., and Thomas Chambers, Esq., administrators of Hon. Thomas Duncan, deceased, may severally make full, true, and perfect answers, upon their corporal oaths, to the several charges and statements in this bill.

Agreement of Counsel.

Afterwards, to wit, on the fourteenth day of October, A. D. 1851, an agreement of counsel as to what papers shall go in the record to be made up for the Supreme Court, is presented and filed, which agreement is in the words and of the tenor following, to wit:

Agreement as to papers to go in the Record.

FISHER
v.
HALDEMAN. } In Equity.

1. All the papers from the Land Office may be answered to the record, furnished by either side.
2. All depositions, on either side, that were in evidence on former trials, to be answered to the record.
3. All the title papers, on either side, that were given in evidence on former trials, to be answered to the record.
4. The records of former trials to be answered to the record.
5. The depositions taken in this case, on both sides, and certified copies of deeds from Dauphin County, to be answered to the record. Subject to legal exceptions to subject-matter at Washington.

W. L. HIRST,
For Plaintiff.
GARRICK MALLERY,
For Defendants.

October 14th, 1851.

Papers from the Land Office.

Pennsylvania, *ss.*

By order of the Honorable Proprietary.

These are to license and allow Francis Somerfield to take up, settle, and improve on two hundred acres of land on the west side of Susquehanna River. To be bounded on the northeast with the said river, on the southeast with Codorus Creek, on the upper side with James Hendrick's place, and to include an island near the shore, opposite to the same. To be hereafter surveyed to the said Francis Somerfield on the common terms other land in those parts are sold, provided the same has not been before granted to any other person.

Given under my hand and the 20th day of April, Anno Domini 1734.

S. A. BLUNSTONE.

Lancaster.

In consideration of ten pounds, ten shillings, to me in hand paid, or secured to be paid, I do assign ye within granted land with my improvement on ye same to Samuel Jackson, his heirs and assigns, forever, as witness my hand this 4th day of March, 1737–8.

his
FRANCIS ⋈ SOMERFIELD.
mark.

License to Francis Somerfield.

15 June, 1752. Let this license be preserved in the office, and accept the return of land and island, made by Zachary Butcher, to Nic's Scull, Surveyor-General.

R. PETERS.

The grant of ye island is in the list of Sam. Blunston's Lycences.

Pennsylvania, *ss.* By the Proprietaries.

Whereas, Samuel Jackson, of the County of Lancaster, hath requested that we would grant him to take up two hundred acres of land, situate on Susquehanna River, seated and improved by Francis Somerfield, in Township, in said County of Lancaster, for which he agrees to pay to our use fifteen pounds, ten shillings, current money of this province, for each hundred acres, and the yearly quit-rent of one half penny sterling for every acre thereof: these are therefore to authorize and require you to survey, or cause to be surveyed unto the said Samuel Jackson, at the place aforesaid, according to the method of townships appointed, the said quantity of 200 acres, if not already surveyed or appropriated, and make return thereof into the Secretary's office, in order for further confirmation, for which this shall be your sufficient warrant. Which survey, in case the said Samuel Jackson fulfil the above agreement, within six months from the date thereof, shall be valid, otherwise void.

Given under my hand, and the lesser seal of our Province, at Philadelphia, this 1st day of September, Anno Domini, one thousand seven hundred and thirty-eight.

THOMAS PENN.

To BENJAMIN EASTBURN,
Surveyor-General.

In testimony that the above is a true copy of the original on file in the Surveyor-General's office, including the paper attached to this copy, I have hereto set my hand and the seal of said office, at Harrisburg, the 8th day of October, 1851.

J. PORTER BRAWLEY,
Surveyor-General.

(For plat, see page 406.)

By virtue of a warrant from the Honorable Proprietaries, dated the day of Anno Domini, 1735, there is surveyed unto Aaron Price, two hundred acres, with allowance of six pr. ct., in two pieces, one of which is an island, containing twenty-four acres, and the other begins at a hickory, by Susquehanna River, thence south, sixty perches; south, eighty perches; west, one hundred and twenty-four perches; to chestnut oak, north, seventy-five degrees; westerly, eighty-six perches, to a white oak; thence north, sixty-eight degrees, westerly, sixty perches to a post; thence north, eighty degrees, westerly, eighteen perches, to a post; north, twenty degrees, easterly, two hundred and two perches, to the said river. Then traversing down the several courses of the said river, about two hundred and eighty perches, to the place of beginning.

Surveyed, December ye 8th, 1735.

P. ZACH. BUTCHER,
Deputy.

In testimony that the above is a copy of the original, on file in the Surveyor-General's office, I have hereto set my hand and the seal of said office, at Harrisburg, this 7 day of October, 1851.

J. PORTER BRAWLEY,
Surveyor-General.

Pennsylvania, *ss.*

[SEAL.] By the Proprietaries.

Whereas, John Harris, of the County of Lancaster, hath requested that we would grant him to take up two hundred acres of land, situate in Pennsborough Township, adjoining William Moreton's land, in the said County of Lancaster, for which he agrees to pay to our use the sum of fifteen pound, ten shillings, current money of this Province, for each hundred acres, with lawful interest for the same, and the yearly quit-rent of one half penny sterling for every acre thereof, both to commence from the 1st of March, 1737. These are, therefore, to authorize and require you to survey or cause to be surveyed, unto the said John Harris, at the place aforesaid, according to the method of townships appointed, the said quantity of 200 acres, if not already surveyed or appropriated, and make return thereof into the Secretary's office, in order for further confirmation, for which this shall be your sufficient warrant. Which survey, in case the said John Harris fulfil the above agreement, within six months from the date hereof, shall be valid, otherwise void.

Given under my hand and seal of the Land Office, by virtue of certain powers from the said Proprietaries, at Philadelphia, this thir-

tieth day of March, Anno Domini, one thousand seven hundred and forty-three.

GEO. THOMAS.

To WILLIAM PARSONS,
Surveyor-General.

In testimony that the above is a copy of the original on file in the Surveyor-General's Office, I have hereto set my hand and the seal of said office, at Harrisburg, this 7 day of October, 1851.

J. PORTER BRAWLEY.
S. G.

(For plat, see page 409.)

A draught of a tract of land situate in Newberry Township, in the County of York, resurveyed the tenth day of July, 1790, agreeably to the lines run formerly, in pursuance of a warrant granted to Albricht Graff, dated the 27th day of December, 1753, containing three hundred and thirty-four acres and a quarter, with the usual allowance of six acres per cent. for roads.

JOHN FORSYTH,
D. S.

To DANIEL BRODHEAD, ESQ.,
Surveyor-General.

In testimony that the above is a copy of the original on file in the Surveyor-General's office, I have hereto set my hand and the seal of said office, at Harrisburg, this 7 day of October, 1851.

[SEAL.] J. PORTER BRAWLEY,
S. G.

Pennsylvania, *ss.*

[SEAL.] By the Proprietaries.

Whereas Albrecht Graff, of the County of York, hath requested that we would grant him to take up three hundred acres of land adjoining his other land, bought of Elizabeth Collins, on Susquehanna, in Newberry Township, in the County of York, for which he agrees to pay to our use fifteen pounds ten shillings, current money of this province, for every hundred acres, and the yearly quit-rent of one half-penny sterling for every acre thereof, these are to authorize and require you to survey, or caused to be surveyed, unto the said Albricht Graff, at the place aforesaid, according to the method of townships appointed, the said quantity of three hundred acres, if not already surveyed or appropriated, and make return thereof into the Secretary's office, in order for further confirmation, for which this shall be your sufficient warrant: which survey, in case the said Albricht Graff fulfil the above agreement within six months from the date hereof, shall be valid, otherwise void.

Given under my hand and seal of the Land Office, by virtue of certain powers from the said proprietaries, at Philadelphia, this twenty-seventh day of December, Anno Domini one thousand seven hundred and fifty-three.

JAMES HAMILTON.

To NICHOLAS SCULL,
Surveyor-General.

In testimony that the foregoing is a copy of the original on file in the Surveyor-General's Office, I have hereto set my hand and affixed the seal of said office, at Harrisburg, this 7 day of October, 1851.

[SEAL.] J. PORTER BRAWLEY,
S. G.

On the tenth October, 1755, the proprietaries granted a warrant to Richard Peters, Esq., of Thomas Cookson, to survey an island in the River Susquehanna, on which a survey was returned for 334 acres.

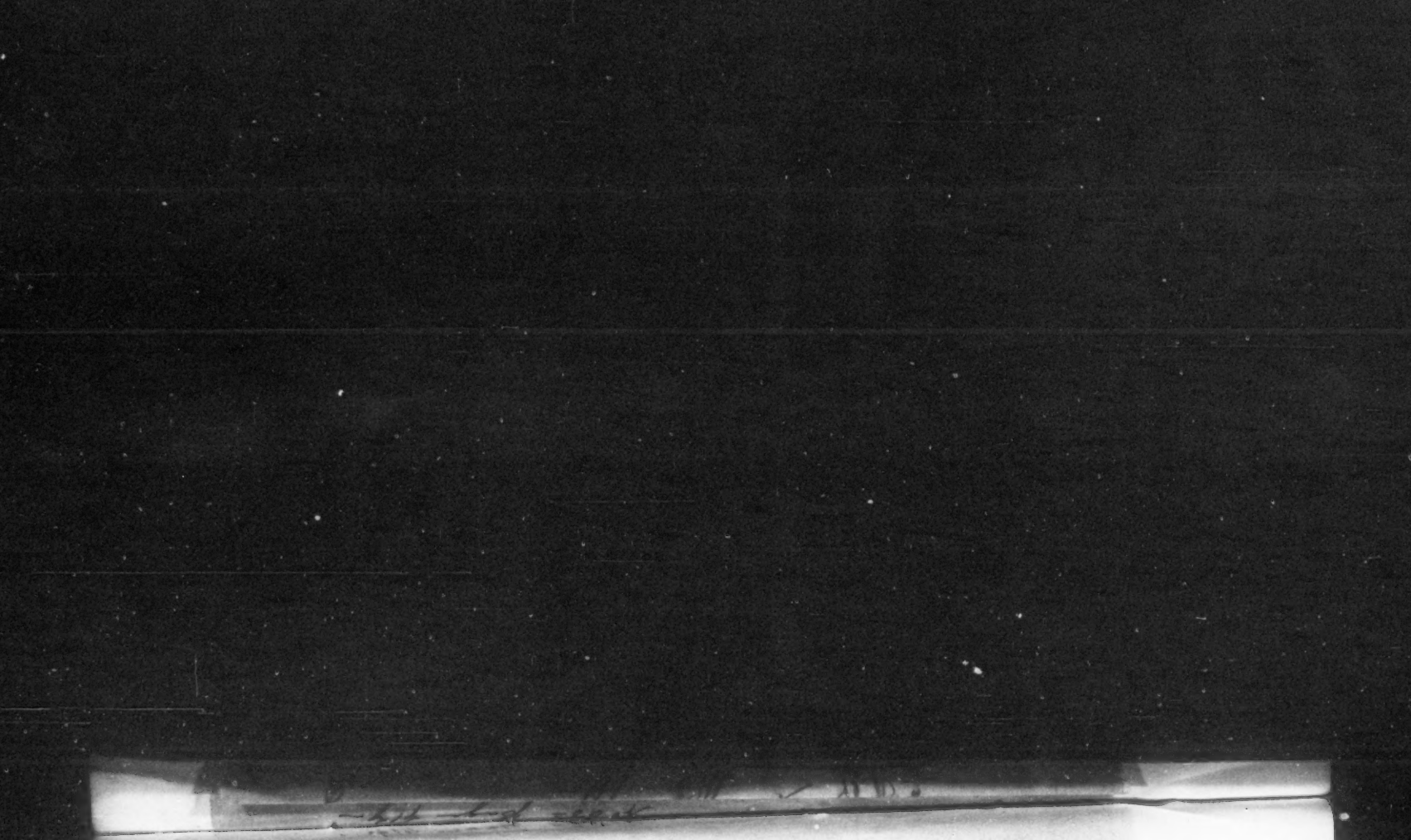
In pursuance of a minute of the Board of Property, dated the 17th April, 1798, on the memorial of Joseph Galoway (see Minute Book, No. 5, page 300), a patent was issued to Alexander Lowry, in trust for the heirs of Daniel Elliott, deceased, for 220 acres. [See City Lot Patent Book, No. 1, page 85.]

On the 24th April, 1800, a patent issued to Jacob Metzier for the residue of the island, 91 acres. [See Patent Book P, vol. 43, page 2.]

For a survey and patent for an island to John Harris, see patent dated October, 1743, recorded in AA, vol. 12, page 26.

Date of Warrants.	To whom Granted.	Situation.	County.	Acres.
1755, Oct. 10.	Richard Peters, one of the executors of Thomas Cookson, dec'd, in trust for the use of the devisees under his will.	Being an island in Susquehanna River, opposite to lands late of the said Thomas Cookson, in Lancaster County, and the lands of Cornelius Lehn, and John Day, in York County.	Lancaster.	200.

I hereby certify the above to be a true copy of an entry, made in Warrant Register, Book T, page 159, now remaining in the Surveyor-General's Office of Pennsylvania. I do further certify, that the register of warrants, kept in the office of the Secretary of the Land Office, from the year 1732 to the year 1760, does not show the



price for which the land was sold, that being set forth in the body of the warrant.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said office, at Harrisburg, this 7th day of October, A.D. 1851.

For J. PORTER BRAWLEY,
Surveyor-General,
R. M. CRAIN.

Date of Warrant.	To whom Granted.	Situation.	County.	Acres.
Oct. 10, 1755.	Richard Peters, executors of Thomas Cookson, dec'd, in trust for the devisees under his will.	Being an island in Susquehanna River, opposite to lands late of the said Thomas Cookson, in Lancaster County, and the lands of Cornelius Lehn, and John Day, in York County.	Lancaster.	200.

In testimony that the above is a true copy, in Warrant Book T, page 159, remaining in my office, I have hereunto set my hand and seal of office, at Philadelphia, this 9th day of February, 1797.

[SEAL.] JOHN HALL,
Secretary Land Office.

In testimony that the foregoing is a copy of the original on file in the Surveyor-General's Office, I have hereto set my hand and the seal of said office, at Harrisburg, this 7th day of October, 1851.

J. PORTER BRAWLEY,
Surveyor-General.

(For plat, see page 414.)

Beginning at a post, thence down the west side, S. 10, E. 13, South 61, S. 6, E. 24, S. 11, E. 30, S. 2, E. 76, S. 3, W. 88, S. 6, E. 51, S. 16, E. 20, S. 24, E. 20, S. 29, E. 16, S. 35½, E. 28, S. 43, E. 56, S. 55, E. 43, to lower point; thence up the east side, N. 23½, E. 54, N. 14, E. 26, N. 4, W. 24, N. 22, W. 22, N. 34, W. 35, N. 38, W. 80, N. 20, W. 30, N. 11, W. 35, N. 1, W. 14, N. 11, E. 22, N. 17, E. 75, N. 7, E. 24, N. 3, E. 80, to a hickory.

Resurveyed for the heirs of Daniel Elliott, dec'd, on the 12th day of April, 1798, the above-described part of an island, situate in the River Susquehanna, just above the Conowago Falls, containing two hundred twenty acres, 147 p., and allowance of six per cent., by virtue of a warrant from the late Proprietaries of Pennsylvania, to

Richard Peters, Esq., one of the executors of Thomas Cookson, Esq., dec'd, the 10th October, 1755, in trust for the heirs of said dec'd.

P. BARTRAM GALBRAITH,
Deputy Surveyor.

DAN'L BRODHEAD,
Surveyor-General.

In testimony that the above is a copy of *of* the original on file in the Surveyor-General's Office, I have hereto set my hand and the seal of said office, at Harrisburg, this 7th day of October, Anno Domini 1851.

J. PORTER BRAWLEY,
S. G.

"At a meeting of the agents of the Governors, the 19th of September, 1765, to employ Mr. Edward Shippen, Jun'r, to sue the persons named in Jacob Wisler's letter of the 9th of September last, for cutting wood on the island, &c., at Susquehanna, and to bring ejectments against the persons settled on the Indian town."

I hereby certify the above to be a true copy of a minute of the Board of Property, as found recorded in Minute Book No. 1, page 6, now remaining in the Surveyor-General's Office of Pennsylvania.

In testimony whereof, I have hereto set my hand and affixed the seal of said office, at Harrisburg, this 7th day of October, A. D. 1851.

For J. PORTER BRAWLEY,
S. G.
R. M. CRAIN.

"At a meeting at the Governors, on property business, the 7th March, 1766."

The secretary is ordered by the Governor to Bartram Galbraith, deputy surveyor, to superintend the islands above Anderson's Ferry, and to give in the names of all trespassers on any of them to Edward Shippen, Jun'r, Esq., in order that they may be prosecuted when the courts open.

I certify the above to be a true copy of the minute of the Board of Property, as found in Minute Book No. 1, of the above date, and now remaining in Surveyor-General's Office of Pennsylvania.

In testimony whereof, I have hereto set my hand and affixed the seal of said office, at Harrisburg, this 7th day of October, A. D. 1851.

For J. PORTER BRAWLEY,
S. G.
R. M. CRAIN.

PHILADELPHIA, June 6th, 1796.

Alexander Lowry, in trust for the legal representatives of Daniel Elliott, deceased, debtor, to Islands for 222 a., 147 p., part of an

2764

island containing 312 a., 122 p., situate in Susquehanna River, Dauphin County, surveyed for the heirs of Daniel Elliott, deceased, in pursuance of a warrant, said to be dated 10th October, 1755, granted to Richard Peters, Esq., one of the executors of Thomas Cookson, late of Lancaster, deceased, in trust for the use of the devisees under his will. 309. 5. 6.

Cash in specie. Dr. to sundries.

To Alexander Lowry, in trust, &c., three hundred and nine pounds five-sixths in full for 220 a., 147 p., received £309. 5. 6.

I hereby certify the above to be a true copy from the Receiver-General's Day Book, No. 40, page 97, now remaining in the office of the Surveyor-General's Office of Pennsylvania.

In testimony whereof, I have hereto set my hand and affixed the seal of said office, at Harrisburg, the 7th day of October, 1851.

For J. PORTER BRAWLEY,
S. G.

R. M. CRAIN.

The Commonwealth of Pennsylvania, *ss.*

Whereas, William Dunn, of the County of , hath requested to take up three hundred acres of land, including his improvement, made about the year 1770, in the Great Island, in the West Branch of Susquehanna, in the County of Northumberland, for which he agrees to pay immediately into the office of the Receiver-General for the use of this State, at the rate of thirty pounds per hundred acres, in gold, silver, paper money of this State, or certificates, agreeably to an Act of Assembly, passed the 1st day of April, and of the 21st day of December, 1784.

These are therefore to authorize and require you to survey or cause to be surveyed unto the said William Dunn, at the place aforesaid, according to the manner of townships appointed, the said quantity of acres, if not already surveyed or appropriated; and to make return thereof into the Secretary's Office in order for confirmation, for which this shall be your warrant.

In witness whereof, the Hon. Charles Biddle, Esq., Vice-President of the Supreme Executive Council, hath hereunto set his hand and caused the less seal of the said Commonwealth to be affixed, the thirteenth day of October, 1785.

CHAS. BIDDLE,
Vice-President.

To JOHN LUKENS, Esq.,
Surveyor-General.

In testimony that the above is a copy of the original on file in the

Surveyor-General's Office, I have hereunto set my hand and the seal of said office, at Harrisburg, the fourteenth day of December, 1852.

For J. PORTER BRAWLEY,
THOS. J. REHRER.

John Munderf, in behalf of himself and the other heirs of George Munderf, deceased, applies for an island in the River Susquehanna, in the Township of Conestoga, in the County of Lancaster, called Munderf's Island, containing about seven acres, opposite the land formerly owned by Benjamin Eshleman, but now by Christian Shenk, about ten perches from Burkheld's Island, which island is susceptible of cultivation; it has been improved by the said deceased for a shad fishery twenty years ago last spring, and that about ten years ago the said deceased cultivated the said island by planting corn and tobacco, and sowing rye on the same. December 13, 1802.

JOHN MUNDERF.

To the Hon. ANDREW ELLIOTT,
Secretary of the Land Office of Pennsylvania.

HENRY REAM, Esq.,
ADAM LUTZENBERGER,
JOHN READ, Esq.

I do certify, that the above is a copy of the original application remaining on file in the office of the Secretary of the Land Office.

In testimony whereof, I have hereunto set my hand, and caused the seal of said office to be affixed, at Harrisburg, this 26th day of January, A.D. 1831.

S. WORKMAN,
Secretary of Land Office.

I do certify, that on a careful examination of the books and records in the Land Department of Pennsylvania, there is no evidence found which shows that the former Proprietaries of Pennsylvania ever sold any of the islands in that *in that* part of the River Susquehanna, which lays north of the Blue or Kittating Mountains, previous to the 13th day of October, one thousand seven hundred and sixty. That for the islands sold subsequent to that time the price was much higher than the price of fast land, which was fifteen pounds ten shillings per hundred acres, excepting the lands within the Proprietaries' manors, which was according to agreement with the purchasers.

In witness whereof, I have hereunto set my hand and affixed the seal of the Office of the Surveyor-General of Pennsylvania, this twenty-seventh day of May, A.D. 1851.

For J. PORTER BRAWLEY,
Deputy Surveyor.
R. M. CRAIN.

In Circuit Court United States, Eastern District Pennsylvania.
In Chancery. On Final hearing.

ISAAC M. FISHER
v.
JACOB M. HALDEMAN.

Opinion of the Court.

This case came on for final hearing on the tenth of October. After the learned counsel for the complainant had stated his case, it appeared to the court that assuming, as we had a right to do, that it had been stated as favorably as possibly for the complainant, it was evidently not one which would entitle him to ask the court for a decree in his favor. We therefore thought it unnecessary to consume time in hearing further argument, when the complainant's counsel had candidly demonstrated to us that he had no use for the interference of a chancellor.

In vindication of our opinion, it will not be necessary to give an abstract of the bill and answer, but merely to state a few of the leading important and undisputed facts. The bill commences the history of the case in the first charter to and immigration of William Penn, the proprietor of Pennsylvania, but we do not think it necessary to go farther back than the year 1760. In that year the proprietors, claiming that the islands in the Susquehanna and other navigable streams were their private property, had them surveyed and returned as such. From that time, at least, islands were not subject to be appropriated by the colonists, on the usual terms of settlement, location, or warrant, but were disposed of by private contract, for the highest price which could be obtained.

At that time the land in dispute was surveyed, and returned among others, as the private property of the proprietors; no person being in possession or claiming any equitable title to it. About the year 1798, the persons under whom complainant claims, were found by the agent of the proprietors in possession of the island, and claiming a right from their long occupancy, to a pre-emption right as settlers. They had occupied parts of the island as far back as 1749, or 1750, some ten years before the proprietors had surveyed it; and though not in possession at that time, had afterwards returned. They were told by the agent for the Penns, that they had no title, and if they wanted a legal title they must purchase from the Penns, and that island never had been subject to be taken up by settlement, as the other proprietary lands. These occupants refused or neglected, or were unable to purchase; and about the year 1800, Thomas Duncan purchased from the agent of the Penns. Finding these occupants on the land, he told them they had no title; that islands had never been open to pre-emption by settlement, and that he was the purchaser from the Penns of the legal title, and de-

manded the possession of them, offering to pay them the value of their improvements, and for a release of their claim. They accordingly released their claim, gave up their possession, and received a consideration in money from Mr. Duncan, of about twenty shillings an acre. Mr. Duncan then took possession, and he and those claiming under him have had possession from that day to this, near fifty years.

The prayer of this bill is, that a court of equity, after a lapse of fifty years, and the death of all parties concerned, to the second and third generation, should annul the releases and contracts made in 1800; should pronounce Mr. Duncan and the respectable agents of the Penns, as guilty of falsehood and fraud in obtaining the possession and releases from the squatters on the island, and should compel a transfer of the legal title from Mr. Haldeman (a purchaser for a large consideration without notice) to the complainant, who as prochein ami of the attorney who got up the litigation, pretends to be the purchaser of equity, from the descendants of those who sold and abandoned it a half century ago. And not only so, but an account of profits received by the legal owners for the last fifty years, is (very modestly) demanded. It is true, the bill of complaint is covered over with charges of fraud. The word "fraudulently" is added to qualify every act and declaration mentioned in the bill. Even the courts who have frequently decided the plaintiffs claims to be worthless, are charged with having done it "fraudulently." The pleader seems to have entertained the idea, that if this bill were sufficiently spiced with that word alone (without stating how any fraud was or could have been committed) it would have the magic effect of overturning every objection to staleness of claim, and a total want of equity or law to support it.

Note. Owing to the peculiar constitution of the courts of Pennsylvania, and the anomalous modes of administering equity, as a part of the common law, some persons have very confused notions as to the office and power of courts of equity, or the distinction between law and equity, seeming to content themselves with this brief definition, "that what is not law must be equity."

The occupants of the island, whether we call them settlers or squatters, had, in 1798, but an equity or right of pre-emption, at the very best a legal title, by paying for it. This right of pre-emption or claim on the proprietors for the legal title, on payment of the purchase-money, originated in 1749 or 1750; ten years after that, the proprietors entered on the land, denying any such contract or equitable right of pre-emption to exist, by the very act of their entry and survey. And now, one hundred years after the alleged contract, by which the purchaser became vested with the supposed equitable right, a court of Chancery is called upon to enforce a specific execution of it. In all this time, the equitable claimant has never tendered the purchase-money to the admitted owner of the

legal title and demanded a deed, but fifty years ago surrendered the possession, and released the claim, real or pretended, to the legal owner, for a large and valuable consideration. And yet a specific execution is now demanded in a court of equity, after this length of time, and after a decision, both by the State court and this court, that the claimant never had any equitable title or claim to the lands.

And what are the allegations of the complainant's bill, which are to call forth the aid of this court in exhuming and giving destructive vitality to this long-buried claim?

They seem to be as follows:

1. That Edmund Physic and John R. Coats, the agents of the Penns, combined and conspired with Thomas Duncan, to defraud the settlers of their title to this island.

2. That this fraud consisted in the assertion, that "islands had never been subject to be appropriated as other proprietary lands, by settlement or location, but were treated as the private property of the Penns, and as such, sold by special contract only.

3. That the persons in possession, believing such to be the law, surrendered their possession, and released their claim, whatever it might be, to Thomas Duncan, for the consideration of twenty shillings an acre, which was much less than the full value of the land.

4. That this representation, with regard to the custom or traditionary law of the Province of Pennsylvania, was not true, and that Mr. Duncan must have known it to be so, and therefore made a false representation of the law to the settlers.

5th. That this was a great fraud upon the settlers, and that from their ignorance of the law, they did not discover the fraud, till the survivor of them, one M'Elcar, in 1822, related his story to a young gentleman of the bar, who first discovered the fraud and opened the eyes of the injured man to the enormity of the imposition which had been practised upon him twenty-two years before, by three or four of the most respectable men in the State of Pennsylvania.

6th. That in 1823 an ejectment was brought in the name of M'Elcar against Mr. Duncan, in which a verdict was rendered in favor of the defendant, and on which a final judgment was rendered by the Supreme Court of Pennsylvania against the claim.

7th. That after this, and after a purchase of the legal title by the present defendant for a large consideration, this antiquated claim was transferred to the present complainant, a citizen of Delaware, and nephew to the learned counsel who has conducted this hopeless and harassing litigation, with so much zeal and ability for thirty years past.

9th. That in the name of the present plaintiff was heretofore brought for this same property in this court, in which the plaintiff's claim was decided, by my learned predecessor, to be wholly worthless and un-

manded the possession of them, offering to pay them the value of their improvements, and for a release of their claim. They accordingly released their claim, gave up their possession, and received a consideration in money from Mr. Duncan, of about twenty shillings an acre. Mr. Duncan then took possession, and he and those claiming under him have had possession from that day to this, near fifty years.

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9th. That in the name of the present plaintiff was heretou brought for this same property in this court, in which the plaintiff's claim was decided, by my learned predecessor, to be wholly worthless and un-

founded, and that no such law or custom ever existed within the Province as is now pretended by the complainant.

10th. That this supposed ignorance of the law by the settlers, and concealment of it somehow or another by Thomas Duncan, will account in equity for the delay of 22 years in any attempt to set aside the contract and recover the possession from the legal owners.

11th. That the obstinacy, ignorance, or fraudulent conduct of the courts, in deciding against the merits of complainant's claim, will sufficiently account for some thirty years more delay.

Such I believe to be a simple and true statement of the complainant's case, when alienated from the mass of other matter with which it is mixed up.

Now, the whole foundation and superstructure of the case rests on this assumption, to wit: "that in 1749, by the law of the land, a preemption right to Island in the Susquehanna River could be obtained by settlement." After 1760, it is admitted, they were sold only on special contract; the assertion of the Penns, at that time, of a right to survey them as their own and to exclude others, would seem to show that they did not then so consider them. And every decision or dictum of the courts of Pennsylvania, to be found on record, as well as the decision of my learned predecessor in this court, and in this case, negative the existence of any such law, custom, or tradition. If this be so, the complainant and those under whom he claims, never had a spark of title, equitable or legal, unless possession and occupancy as squatters or trespassers should be treated as adverse to the proprietors of the province, which it never was. A patent, a grant from the proprietaries or the commonwealth, is never presumed from long possession, unless in suits with third persons, because, from known custom, settlers on land were never presumed to hold adversely to the proprietary or government. It is well known that the purchase-money of lands, which have been held in possession for more than a century, remains unpaid; yet no one ever alleged that a patent from the proprietary or *or* state would be presumed as against the Commonwealth, who has succeeded to the rights of the Proprietaries.

But with this we have nothing to do, for, if the plaintiff could claim on a presumption of grant, his title is legal, and should have been prosecuted in a court of law.

The gravamen of the present case is that the possession and release of the settler's claim was obtained by fraud, and that this fraud consisted in a misstatement of the law.

Now, assuming that Mr. Duncan was mistaken in the law, or had misstated it to the persons in possession, claiming title, how can a vendor be heard to stultify himself by coming into court to have his contract set aside, on the allegation that he did not know the valuation of his own title, that he was ignorant of the law, and would not inquire; that, rather than take that trouble, he gave a release to his opponent at his own offer or valuation; or, that he compromised

and settled a doubtful claim by a release, and now thinks he was mistaken in the law, and possibly he once had a good title.

3d. What, too, is this allegation about the concealment and discovery of the supposed fraud, which it is expected a court of equity will seize upon, as a sufficient reason for setting aside the statute of limitations and disregarding the utter staleness of this claim?

Supposing Mr. Duncan knew that his depreciating opinion of the value of the settlers' claim was not true, still it was a question of law. It was as open to one party to know it as the other, and as the occupants' title depended wholly upon it, they of all others were bound to inquire and know it. Mr. Duncan cannot be presumed to conceal the customs, laws, and traditions of the Colony of Pennsylvania in his breast or head.

And, what was the discovery so singularly made in 1822? This, and no more: that the surviving settler had discovered a young lawyer, whose opinion of the law differed from that of Mr. Duncan, with respect to the ancient customs of the Province of Pennsylvania, depending on tradition, unwritten law, and unreported judicial decisions.

Now supposing this bill filed in 1822, would a court of equity set aside an executed contract with possession delivered, and money paid more than twenty years before, on such allegations of fraud and concealment as these? If they would, no man's property would be safe.

And what is to account for twenty-six years more of delay? The answer is, we have been struggling to get possession in the meanwhile, and harassing the owner with suits, but we could not get possession, because the courts have most foolishly or fraudulently decided, that we have no title at all, and never had. And thus it is made a ground of equity, and a reason for this court undertaking to set aside a contract, executed fifty years ago, and not dismissing the bill for the staleness of its demand, that it has been decided by two courts that the complainants' claim was utterly worthless, that therefore the staleness of the claim is caused not by the laches of the complainant, but by the obstinacy, ignorance, or fraud of the proceeding.

The facts alleged to evade the difficulty of staleness, are themselves conclusive reasons why this court should dismiss the bill. An ejectment in Pennsylvania (where they have no Court of Chancery), may be supported either on a legal or equitable title. The judgment of the Supreme Court of Pennsylvania was equivalent to a decree in equity, dismissing the complete bill on the merits. In the ejectment in this court, the plaintiff took a nonsuit, but not till after the court had decided, that his title was altogether worthless, and never had any existence. In this way, the party may have evaded the statutory bar of two verdicts and judgments in Pennsylvania, but has not escaped from the equitable estoppel of "res judicata."

In writs of law, verdicts and judgments in ejectment are not conclusive between the parties, for reasons which we need not mention. But the reasons are wholly technical, factitious, and fictitious, and the doctrine should not be transferred to a court of equity.

I need only add, that courts of equity, in dealing with stale claims like the present, do not inquire, whether by a residence out of the state, or by making entries, "pulling cherries, and apples on the land," the technical legal bar of the statute has been evaded, or avoided. Equity, on principles of its own, refuses to act on stale claims, and leaves the parties to their legal remedies. There is nothing alleged in this case which excuses the delay, and the charge of staleness. On this ground alone this bill must be dismissed.

By the court.

R. C. GRIER.

C. C. U. S. In Equity, Oct. S. 1848.

FISHER
v.
HALDEMAN. } No. 2.

And now, Sept. 22, 1856, the complainant enters an appeal to the Supreme Court of the United States, and the appeal is allowed, and security ordered in $200. Henry Leibert, approved as security, on justification before the clerk.

United States of America, Eastern District of Pennsylvania, *sct.*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the third circuit, in a certain suit in equity therein, lately depending between Isaac M. Fisher, complainant, and Jacob M. Haldeman, respondent.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Circuit Court, at [SEAL.] Philadelphia, this second day of December, A.D. 1856, and in the eighty-first year of the Independence of the said United States.

GEORGE PLITT,
Clerk of Circuit Court.

United States, Eastern District of Pennsylvania, *sct.*

To Jacob M. Haldeman, a citizen of the State of Pennsylvania, and Thomas Chambers, a citizen of the State of Pennsylvania, and who is administrator de bonis non cum testamento annexo, of Thomas Duncan, deceased, who was also a citizen of the State of Pennsylvania.

Whereas Isaac M. Fisher, a citizen of the State of Delaware, hath lately appealed from the decree of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit, dismissing a certain bill of complaint, wherein the said Isaac M. Fisher is the complainant, and the said Jacob Haldeman et al. are the defendants, to the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the first Monday of December next; in which suit he, the said Isaac M. Fisher, was the original complainant, and you, the said Jacob Haldeman, Thomas Chambers, administrator, &c., of Thomas Duncan, were original defendants; and the said Isaac M. Fisher, having given good and sufficient security that he, the said appellant, shall well and truly prosecute his said appeal to effect, and answer all such costs as upon affirmance of the decree of the said Circuit Court, may be adjudged to the appellees. You are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said appeal.

Given under my hand and seal, this 23d day of September, one thousand eight hundred and fifty-six.

[SEAL.] J. K. KANE,
One of the Judges of the Circuit Court for the Third Circuit, Eastern District of Pennsylvania.

United States, Eastern District of Pennsylvania, *ss.*

William H. Miller, a United States Deputy Marshal, in and for the Eastern District of Pennsylvania, being sworn according to law, deposes and says, that on the 24th day of September, A.D. 1856, he served a true and faithful copy of the within citation upon Garrick Mallery, Esquire, one of the counsel named in the said citation; the said Garrick Mallery's name appearing of record as counsel and solicitor, and among the pleadings of the said cause.

WILLIAM H. MILLER,
U. S. Deputy Marshal.

Sworn and subscribed this 25th September, 1856, before me,
J. BURCHARD,
U. S. Commissioner.

Indorsed: No. 2. Circuit Court U. S. Oct. S. 1848. Isaac M. Fisher, a citizen of the State of Delaware, *v.* Jacob M. Haldeman, a citizen of the State of Pennsylvania, Thomas Chambers, a citizen of the State of Pennsylvania, and who is administrator de bonis non cum testamento annexo, of Thomas Duncan, deceased, who was also a citizen of the State of Pennsylvania. In equity. Citation on appeal. Garrick Mallery and Richard C. M'Murtrie, appear of counsel for defendants.